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APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

NO. 74-8

J. B. O'CONNOR, M. D.,
Petitioner,

-v-

KENNETH DONALDSON,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petition for Certiorari filed July 25, 1974
Certiorari Granted October 21, 1974

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

February 26, 1971--Complaint seeking injunctive relief for violation of constitutional rights and petition for writ of habeas corpus.

March 10, 1971--Order denying petition for writ of habeas corpus.

July 26, 1971--Respondents Motion to Strike.

July 26, 1971--Defendants Motion to Set Aside Order.

July 27, 1971--Defendants Motion to Dismiss

July 29, 1971--Plaintiff's Motion for default judgment in the habeas corpus petition and complaint; or in the alternative, order defendants to answer complaint, permitting inspection of hospital record, for substitution of party defendant; to proceed as class action in habeas corpus petition and postpone deposing plaintiff.

August 2, 1971--Defendant's Motion to Dismiss.

August 16, 1971--Order (1) denying defendants' motion to set aside and vacate Court's Order of April 26, 1971 (2) granting motion of defendant Peter Ivory to dismiss complaint and petition (3) granting defendants motion to strike allegations with reference to action as a class suit and giving plaintiff 10 days to amend his complaint (4) denying defendants' motion to strike damage aspect of petition-complaint (5) granting defendants motion to dismiss petition-complaint to the extent that no cause of action has been properly alleged for recovery of damages and petitioners complaint is dismissed without prejudice

to plaintiff to amend complaint is dismissed without prejudice to plaintiff to amend within 10 days (6) granting motion to dismiss insofar as petition-complaint seeks declaratory and injunctive relief w/o prejudice to plaintiff to file a new and separate complaint seeking relief pursuant to 28 USC 2281 and denying all other aspects of the motion (7) granting motion of J. B. O'Connor for protective order and said defendant shall not be required to submit to oral deposition until he regains his health (8) denying plaintiffs' request for permission to interview incarcerees at the Florida State Hospital at Chattahoochee.

August 30, 1971--Plaintiff's First amended complaint.

September 9, 1971--Filed Defendants Emmett S. Roberts and Milton J. Hirschberg's Motion to Dismiss the action in their private and official capacities.

September 9, 1971--Filed Defendants Motion to Dismiss the complaint and amended complaint.

September 28, 1971--Motion of defendant, Virgil D. Smith, M. D., to Dismiss.

September 28, 1971--Defendant's, J. O. Norton, Motion to Dismiss.

November 8, 1971--Filed Plaintiff's Memorandum of Law in Reply to Defendants' Motions to Dismiss.

November 8, 1971--Motion of plaintiff for issuance of order making Milton J. Hirschberg, Emmett S. Roberts, J. O. Norton and Virgil D. Smith parties defendant her and directing the issuance and service of process upon them, nunc pro tun

November 19, 1971--Order pursuant to hearing on motions (1) denying motion of defendants Hirschberg and Roberts to dismiss the complaint for improper joinder of additional parties (2) taking under advisement plaintiff's application for 3 judge court etc. (3) dismissing complaint as to White and Jones (4) deny motions of defts Smith and Norton to dismiss cause and taking under advise other aspects of motions (5) denying motions of defendants O'Connor, Hirschberg, Roberts to dismiss them in their official state capacities and individual (6) dismissing amended complaint insofar as habeas corpus relief pursuant 28 U.S.C. 2241 et seq. (7) denying any other remaining pending motions (8) discovery shall be completed by Jan. 1, 1972 except that upon leaving court parties will be allowed to make such further discovery as becomes necessary (9) motion ore tenus of defendant Norton for the taking of deposition of plaintiff is denied until court has affirmatively determined whether defts Smith and Norton should remain parties to this suit.

January 5, 1972--J. B. O'Connor, M. D. Answer to Interrogatories.

January 10, 1972--Defendants O'Connor and Walls Objection to Interrogatories and Request for Admission.

February 8, 1972--Answer of Defendants J. B. O'Connor, M. D., individually and as former Superintendent of Florida State Hospital, Milton J. Hirschberg, M. D., individually and as Superintendent of Florida State Hospital, Francis G. Walls, M. D., individually and as former Acting Superintendent of Florida State Hospital and Emmett S. Roberts

February 9, 1972--Amendment of Complaint.

April 20, 1972--Order (1) granting plaintiff's motion to add John Gumanis, M. D., as an additional party defendant and directing plaintiff to have service of process on this party issued forthwith (2) granting motion of defendants Roberts, Hirshberg, O'Connor and Walls for order compelling discovery and directing plaintiff to comply with defendant's motion to produce and to furnish requested items for copying and inspection within 10 days and failing this, Court will impose such sanctions as are just and necessary (3) granting plaintiff's motion of 3/22/72 for order compelling defendants to answer interrogatories and requests for admission and defendants are directed to make discovery as requested by plaintiff and to answer in 10 days or as soon thereafter as possible; failing this the court will impose such sanctions as are just and necessary (4) taking under advisement motion of defendant Smith for entry of final judgment pending disposit of all issues.

June 1, 1972--Answer of Defendant John Gumanis, M. D.

June 26, 1972--Filed answer to Supplemental Interrogatories to Defendant O'Connor.

June 26, 1972--Response to Request for Defendant O'Connor to Admit.

August 7, 1972--Deposition of J. B. O'Connor, M. D., on Written Interrogatories.

October 5, 1972--Order granting motion for summary judgment and directed to Clerk to judgment in favor of defendants, Virgil D. Smith, M. D., and J. O. Norton.

October 5, 1972--Judgment on Decision by the Court in favor of defendants, Virgil D. Smith, M. D., and J. O. Norton, M. D.

November 7, 1972--Amended Responses to Interrogatories to Dr. O'Connor dated Oct. 13, 1972, in Reply to Telephone Request of Eugene Dubose on October 30, 1972.

November 7, 1972--Amendment to Answer.

November 16, 1972--Amendment to Deposition of J. B. O'Connor, M. D. on Written Interrogatories.

November 17, 1972--Deposition of Dr. J. B. O'Connor on Written Interrogatories taken November 16, 1972.

November 21, 1972--CASE CAME ON FOR TRIAL BY JURY of 6.

November 28, 1972--FILED in open court Jury verdict in favor of Defendant Francis G. Walls and against plaintiff Kenneth Donaldson.

November 29, 1972--FILED in open court jury verdict in favor of plaintiff and against the defendant J. B. O'Connor for punitive damages in the sume of $5,000.

November 29, 1972--FILED in open court jury verdict in favor of plaintiff and against the defendant J. B. O'Connor for compensatory damages in the sum of $17,000.00.

November 29, 1972--FILED in open court jury verdict in favor of plaintiff and against the defendant John Gumanis for punitive damages in the sum of $5,000.

November 29, 1972--FILED in open court jury verdict in favor of plaintiff and against the defendant John Gumanis for compensatory damages in the sum of $11,5000.

November 29, 1972--FILED Judgment in favor of defendant Francis G. Walls against Plaintiff.

November 29, 1972--FILED Judgment in favor of plaintiff and against defendant O'Connor in the total sum of $22,000.00.

November 29, 1972--FILED Judgment in favor of plaintiff and against defendant Gumanis in the total sum of $16,500.00.

December 8, 1972--FILED Motion for Judgment in Accordance with Motion for Directed Verdict.

December 8, 1972--FILED Motion for New Trial.

December 11, 1972--FILED Amendment to Motion for New Trial.

December 20, 1972--Notice of Appeal with Certificate of Service thereon to counsel of record.

January 29, 1973--Filed Notice of Appeal from final judgment of 11/29/72 by defendant Gumanis.

April 26, 1974--Opinion of Court of Appeals.

TRANSCRIPT OF TESTIMONY

11/21/72

TESTIMONY OF DR. WALTER FOX--DIRECT EXAMINATION

BY MR. ENNIS:

Q Dr. Fox, have you had occasion in your experience to examine hospital records of mental patients?

A Yes, sir.

Q Approximately how many?

A It would be in the hundreds, sir.

[65]

Q Has it been part of your responsibility to examine those records to determine whether or not they were adequate records?

A Yes, sir, this is a big part of the hospital surveys that I do as a consultant for the National Institute of Mental Health.

Q Has it been part of your experience to examine those records to determine whether or not the patients described in those records were receiving adequate treatment?

A Yes, sir, that is the purpose of the examination.

Q Now, I will ask you, Dr. Fox, have you had occasion to examine the hospital records of Mr. Kenneth Donaldson, the Plaintiff in this case?

A Yes, sir, I have.

Q Dr. Fox, based upon your professional opinion after your review of that record, I would like to ask you for the period 1957 through 1967, is there evidence in that record that Mr. Donaldson received psychiatric treatment?

A No. In my opinion there is not evidence that he received psychiatric treatment. There are a number of progress notes which are generally brief and which make no reference to a treatment plan which frequently refer to continue custodial care or words to that effect, which I

[66]

interpret to mean provide food, clothing and shelter, and that is not psychiatric treatment.

Q Again, for that period of time, Dr. Fox, is there any evidence in the record that Mr. Donaldson received any form of care or treatment that he could not have received in a prison?

A No, sir.

Q I am sorry.

A No.

MR. MAHORNER:

Wait.

BY MR. ENNIS:

[69]

to document evidence of schizophrenia if that is the diagnosis that has been given to a patient?

A Yes, sir.

Q Is there evidence in the record that Mr. Donaldson was physically dangerous to himself or to others?

A I could find no evidence anywhere to that effect, that he ever hit anyone or ever even threatened anyone verbally. There is one incident report that shows that another patient ran at him and he stepped aside.

Now, I believe there is one unsupported statement in a staff conference about 1964 attributed to Dr. O'Connor saying that this patient was incompetent and should be considered dangerous to others. Now, this was a conclusion, but as to the basis of that conclusion, I couldn't find anything in the record.

Q Dr. Fox, is it standard practice in mental hospitals to document in the patient's record every incident of dangerous or violent behavior?

A Yes, sir.

Q And you found no such incidents in this record?

A No, sir.

Q Dr. Fox, was there evidence in this record that Mr. Donaldson received an individualized treatment plan?

A No, sir, there was no evidence of that in those first ten years.

[70]

Q Was there evidence in the record that the hospital staff ever assessed Mr. Donaldson's strengths?

A No, there -- at least, let me again say for the first ten years, there was no evidence of this, and, of course, the major goal of a hospital is to get people out, and in order to do that you must build on their strengths, so this is a very important --

Q And why is that, Dr.?

A Well, you never get anyone out of a hospital if you concentrate on their deficiencies, on their problems.

Q Now, Dr., assuming the evidence in this case will indicate that for the first ten years at Florida State Hospital the Plaintiff was confined to a locked building and a locked ward and had no grounds privileges, would that be consistent with a psychiatric treatment plan for him?

A No, it would not.

Q Why is that?

A Well, there was nothing in his past history to indicate that he was likely to be dangerous to other people. There was nothing in his past history that showed that he wasn't a generally self-sustaining if frequent moving individual.

Everything would point to the fact that here was an individual who had made it pretty well, who was responsible, who did have regard for his fellow human beings,

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and right off you look at this guy as somebody to get out of the hospital very soon, and one of the ways you would do that is by giving him as much freedom as possible as soon as possible.

Certainly confinement never improves psychiatric symptoms. It makes a suspicious person more suspicious, a depressed person more depressed, and another thing about being in confinement, by and large you are made dependant on the routine of the hospital.

You make no decisions about when to get up, what to eat, what to do next, when to go to bed, sometimes even such things as when to shower have been decided, and this will gradually rob a person of their independence.

Q Did that happen in this particular case?

A No, surprisingly, it didn't.

Q And what does that indicate to you?

A That Mr. Donaldson had a great more, great more internal strength than most of the people that would find themselves in that sort of total institution for that period of time.

Q Dr. Fox, in your professional opinion how reliable are psychiatric predictions of dangerous behavior?

A I used to think I could do it a lot better than I do now. Generally speaking, my experience over the years shows that we score poorly on predicting future

[72]

dangerous behavior, and by and large in hospital psychiatry we tend to see more danger than future events show to be true.

Q Dr. Fox, what is your professional opinion from reading the record concerning the hospital's efforts to discharge Mr. Donaldson?

A Well, it appears to me that for the first few years there was an almost indifference to discharge. It was almost as if this was not one of the hospital's goals, it just wasn't spoken to too much,

and then, let's say from 1957 to 1963 that seemed to bear out, then in 1963 I would have to say that there is some evidence that there was actual resistance to the discharge of Mr. Donaldson.

For instance, in June of 1963 an agency called Helping Hands wrote to Dr. O'Connor and explained their services.

They said they were a halfway house, and that they helped thousands of people like Mr. Donaldson, former transition back into the community, that they had been in correspondence with Mr. Donaldson and that they would like the opportunity to accept him into their program, and they received a letter back saying that by and large, as I recall the letter, this man needed a great deal of super-vision, which, of course, a halfway house is prepared to give, that released -- it should be back to his parents,

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and bear in mind, now, these people are in their 80's, I think, at this point, and that under the circumstances a discharge to a third party at this point seemed ill advised.

Now, that seems like more than just indifference. It was an indication that Dr. O'Connor felt that this person should not be out.

On another occasion when a friend from New York State offered to come and get Mr. Donaldson and help him get back on his feet outside of the hospital, this man was actually discouraged. He was told he would have to get permission from the parents, which I believe he got, and then he had to get, tell, you know, more about himself, which he did, and then I believe it was a note written sometime in 1964 by Dr. O'Connor to, I think, the attending physician, to the effect that anyone who would want to take Mr. Donaldson into their home must not be too well, himself.

Q Let me ask you, Dr. Fox, on this, you mentioned the halfway house. Would you please briefly explain to the Jury what a halfway house is?

A Well, it is just really what the name implies. It is a passageway between, or a stepping stone, perhaps, between, let's say, a total institution where a person has spent twenty-four hours, and an independent living situation.

There are many more stepping stones that one could use, but, and let's just give as an example, that a

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person would go from twenty-four hour care in a mental hospital to a halfway house where they would be able to sleep at night and maybe have some help

but what I would like for the doctor to talk about is the date of the letter and then how long thereafter he was discharged, which is now evident from the face of the letter.

THE COURT:

Which is not what?

MR. ENNIS:

Evident from the face of the letter.

[77]

THE COURT:

Well, there is evidence, though, as to when the man was discharged and will come out, is there not?

MR. ENNIS:

Yes, sir, Your Honor.

THE COURT:

I think an answer to that question would be objectionable.

BY MR. ENNIS:

Q All right, Your Honor, I will withdraw the question, then.

Dr. Fox, you testified you had examined hundreds of hospital records of mental

patients. Would it be one hundred, two hundred, nine hundred? Can you give a closer estimate?

A Oh, five hundred. You see, when we make these surveys, we usually examine about thirty records right there, so within the last two and a half years, I guess I have made fifteen of those surveys, so you can calculate that at maybe four hundred or five hundred records that we have surveyed within the last --

Q Within the last two years?

A Yes, sir.

Q Now, in your professional opinion was Mr. Donaldson's hospital record an adequate hospital record?

[78]

A No, sir.

Q Could you just tell the Jury, if you would, some of the deficiencies?

A Well, basically there was at no time except for perhaps two months in 1967 evidence of a treatment plan. Now, a treatment plan is basic to discharging a person.

A treatment plan is where you list some of the problems to you goal of getting a person out of the hospital. You list

the assets, the strengths, the things that can be built on, and you indicate who is going to be responsible for trying to develop some of these assets, and overcome some of these problems.

You may have some short term goals, like a person is sleepless, trying to get over that, some long term goals, like resolving a family conflict or a job situation, or something like that, but it really is basic to have a treatment plan, have a group of people working together to a goal, and then to have progress notes that speak to that treatment plan, you know, how is it coming, if it is coming well, fine, if it is not, then we change it.

So the lack of a treatment plan, the nature of the progress notes, the long intervals sometimes between the progress notes, I think in the first ten years there were fifty progress notes, which works out to about two and a half months each, but these would be as close together as a week sometimes and as far apart as fourteen months and

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six months at other times.

Q Now, Dr. Fox, is it standard practice in mental hospitals for a psychiatrist or physician or psychologist to enter a note in the hospital record everytime he has a significant contact with the patient.

A Yes, sir.

Q Did the report indicate how long Mr. Donaldson had been at the hospital before he was first presented to a staff conference?

A Yes, sir, it did. He arrived in 1957. As I recall, the first staff conference was in 1962. I may be incorrect in that, but it was a considerable period of time.

Q Now, Dr. Fox, assume that the evidence will show that Florida State Hospital had low staff and had limited financial resources, given those limitations, could something positive, nevertheless, have been done for Mr. Donaldson?

A Yes, I think so, and I think the vital thing would have been for the admitting person, admitting physician to have spotted this man from his history as a person to stay in the hospital, but a short period of time to have communicated to the rest of the staff working with Mr. Donaldson, and to have immediately embarked on a program which would have emphasized continuation of the community ties, in this case, with his parents who were not too far

away, or if he didn't want that, to change it and start building ties perhaps to a job situation somewhere.

Q How could that have been a help?

A Well, by reading the want ads for one thing. If he, as this man said, I believe at one time that he wanted to move to someplace, establish himself in a town in the north, one of the methods of helping out with that, particularly with this man's ability to find jobs, would be to provide him with a paper from one of those areas.

Q What do you mean when you talk about this man's ability to find jobs? Would you elaborate on that, please?

A Well, yes, something that I saw in the record many times was that he was a floater, that he was always leaving jobs. Well, that is the opposite side of the coin. The other side of the coin is that he was always finding jobs and that he was not a welfare case.

Q Dr. Fox, given an institution with limited resources, would it still have been possible to give Mr. Donaldson grounds privileges?

A Of course.

Q How about weekend passes?

A Yes.

Q Or trial visits for a week or month or two?

A Surely.

[81]

Q And would that be the standard psychiatric practice?

A Yes.

Q Given --

A In the case of Mr. Donaldson.

Q Given the limited resources of the hospital, would it have been possible to assign him to an occupational therapy department?

A This would have been excellent.

Q It would have been what?

A This would have been excellent because in some of the social history given by his parents there is an indication of a musical interest and artistic interest and here would have been a way to let him express himself, gain self-esteem, and so forth, and so on.

Ten years after his admisstion he was assigned and he did some pretty good painting apparently because there is some indication in the chart there that he was able to sell some of his paintings, so this would be --

Q Now, could you please describe to the Jury the function of the meaningful work program in an institution with limited resources?

A With limited resources, by that, do you mean no ability to perform a vocational rehabilitation function?

Q No, let me rephrase the question. What I am

[82]

asking you is were there any types of jobs or work at Florida State Hospital that Mr. Donaldson could have been assigned to that would have been a positive benefit to him?

A Well, he listed his means of livelihood as painting and carpentry, and perhaps if the hospital had a master carpenter, he could have not only maintained that skill, but learned some more, things like that are good, just so long as you don't exploit the patient in the process.

Q Now, Dr. Fox, I believe you testified that it was ten years before he was assigned to an occupational therapy program. Is there any evidence in the record that during that first ten years he was refused permission to go to an occupational therapy program?

A I must confess I don't know. I read somewhere on one occasion that he was refused, but I don't remember whether it was within the first ten years or not.

Q All right, now, Dr. Fox, given the positive steps that could have been taken to treat Mr. Donaldson even in an institution with limited resources, how long do you think it would have been necessary to confine him?

A Oh, I would guess possibly two months.

Q No longer?

A I shouldn't think so. I might say here that a guess of two or three months is presuming that the hospital employs a staff meeting involving several physicians to make

[83]

a simple decision like discharge on the average patient.

I don't think that that should have been necessary in the case of Mr. Donaldson. It wasn't that complicated a case.

Q Let me see if I understand your testimony. Are you testifying that if a staff of doctors had to make the decision to release him --

A It might take two or three months.

Q This would take two or three months, but if only one physician was responsible for that, how long would you say?

A It probably would take less. It should take less.

MR. ENNIS:

I have nc further questions.

CROSS EXAMINATION

BY MR. MAHORNER:

Q Dr., I have to ask you a few questions, if you don't mind. When did you first see the Defendant? Excuse me. When did you first see Mr. Donaldson?

A Last night when I got off the plane.

Q When did you first receive the hospital record?

A I received the hospital record approximately two weeks ago, sir.

[84]

Q Now, did you treat any patients yesterday?

A No, sir.

Q How about the day before?

A No, sir.

Q Have you treated any patients in the last week.

MR MAHORNER:

I apologize. I assure you it is unintended.

THE COURT:

I am sure you are not doing it intentionally because it tends to show that you don't know the difference.

MR. MAHORNER:

I understand. Right.

THE COURT:

All right.

BY MR. MAHORNER:

Q When did you first receive a psychological record?

A They came at the same time as the rest of the records.

Q As a separate package?

A As I recall, there was several pages, but the psychologicals were not separate. They were a part of, you know, one package, one of two or three packages.

Q But you never received a separate package of

[90]

psychological records?

A Not a separate package of them, no. I saw the psychological reports which were all pretty much in sequence, as I recall.

Q You saw the ones that are in the hospital records now?

A Yes sir.

Q Did you see anything in the record as to any test being done by an outside psychologist not associated with the institution?

A I saw a reference to that. I don't recall seeing the results of his test.

Q Did you see any instrument stating his findings or opinions?

A If I recall correctly, and I sure could be wrong on this, there was reference that an outside psychologist had found evidence that he might be dangerous, or it was some negative remark.

Q But you found no instrument that purported to be from that psychologist himself in the record?

A No, sir.

Q Did you see any evidence that Rorschach tests were made?

A Yes, sir, a number of the psychological reports indicated what tests were made.

[91]

Q Did you see the tests, themselves?

A No, sir.

Q Now, you stated the man had done pretty well. Do you know if he was ever in the service?

A I don't believe he was, sir.

Q Do you know if he was turned down for any reason of any incapacity?

A I don't recall from the record that that was mentioned one way or the other, but I will leave it at that.

Q Did you see anything that indicated who committed him?

A Yes. His parents requested his commitment, and two physicians whose names I don't recall signed the form.

Q Okay, do those physicians appear to be unattached to the institution?

A Yes, they did.

Q Was there a diagnosis in the form?

A Yes. As I recall, it was paranoid schizophrenia.

Q Was there any reference to a prior incarceration in the record -- excuse me. I will correct that, a prior hospitalization?

A I don't remember whether there was in the commitment papers, but there certainly was in the hospital

[92]

record. It was mentioned a number of times and there was even a letter from -- I think it was the Marcy Hospital detailing his hospitalization there for about three months in 1943, I believe.

Q Was the term dementia praecox or schizophrenia used?

A Yes, dementia praecox was.

Q Was that term used back then which has the same meaning as paranoid schizophrenia?

A Yes. Well, it has been the same meaning as schizophrenia.

Q Do you know anything about the job record of the Defendant prior to hospitalization?

A Only tnat he changed jobs frequently. To the best of my knowledge, he was never on welfare. At one time he ran a little business of his own, I believe with his father, and that he listed carpentry and painting as two of the things that he did, carpentry and painting.

I think there was some mention that at times he would help build the parents house or fix it up. There was frequent mention that he was moving, moving, moving, but not too much as to the specific nature of the jobs he held or for where or for how long.

Q Was there any indication that he moved because he felt his coworkers were against him?

[93]

A Yes.

Q Was there any indication as to who initiated the proceedings for Marcy?

A I think it was his wife.

Q Do you know if the marriage continued?

A It did not. She divorced him in 1949, according to the record.

Q Do you know as to whether there was any type of semi-traumatic academic experience early in, approximately when the Plaintiff was 21 or so?

A No, sir, I don't. I know that he started college and that he did not finish college. The record in various places says one and a half years and in other places it says two years, and it also says that he stopped college and lived around the house for a while.

Q Do you have any knowledge as to the behavior pattern or other reasons which may have caused the wife and/or the mother and father the other time to initiate this type of proceeding?

A I really don't know why the wife did. Mr. Donaldson says something to the effect that he couldn't blame her, you know, she didn't know what she was doing or didn't understand, and I might imply from that that she was advised to do it.

Now, as far as the other instances are

[94]

concerned, the parents said that he thought somebody was poisoning his food, to the best of my recollection, and that apparently alarmed them enough that they proceeded.

Q Do you know whether or not he was treated in Philadelphia or went to a hospital there?

A I missed that if it was in the record. I recall his going to Travelers Aid or something, some mention of that in Philadelphia.

Q Was that concerning a mental condition?

A I am not clear on that.

Q Does the judgment as to whether a person

is to be released from a mental institution involve factors that have to be considered both as to release and as to against release? In other words, is there a way when you start to make this decision as to the interest of the public and the interest of the patient, or is it just a matter that you feel the patient's interest can best be served by release and then you make the decision?

A Well, I think your obligation is to your patient, but I cannot foresee of urging release of the patient that would be to the detriment of the public because that would come right back to haunt your patient.

THE COURT:

I don't want to rush you, Mr. Mahorner, but you are taking too much time. Let's move along.

[95]

BY MR. MAHORNER:

Q In 1957 what was the best medical treatment plan that could have been given for the man?

A In 1957 I would have proceeded as I mentioned earlier, pegging him for an early discharge, letting the folks on the ward know that, giving him as much freedom in the meantime, keeping those ties with the community as strong as

possible, and if things went well, that is what I would have done.

Q Did you see any indication in the record that he refused treatment?

A I saw an indication in Dr. Adair's admission note that he didn't want to have electroshock treatment and I think Dr. Adair added that he didn't think it would do much good anyway.

There was one other or perhaps more than one other place where Mr. Donaldson mentioned a feeling towards Christian Science and a wish not to receive medication. This is a wish that in 1957 for a while, if things went well, I would have certainly have respected. There might have come a time when I would have and hopefully after trust had been built up where the man could have been persuaded to take the drugs.

Ten years later this was tried briefly, which I think is perfectly indicated, except that probably he

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should have --

Q Now, if drugs had been received by him initially this would have been a form that you would not generally receive in prison, is that correct?

A If the drugs had been received originally, no, I wouldn't go that far.

assault, I know that. Perhaps it was that they were calling him homosexual. I remember the reference to homosexual on two or three occasions.

Q Now, on the question of standard practice put in the hospital record, if you were in an institution wherein there was like one physician, say, for 180 or 200 patients, in general each contact of the patient, whether or not it could be in the hospital record, or would

[100]

it be a matter that they might emphasize the treatment or contacts in the record by itself?

A Particularly when you have a very low physician to patient ratio, the hospital bylaws should allow other people to contribute to the progress notes and the hospital bylaws should also indicate an outside limit or the intervals of these progress notes, so, no, in answer to your question, but every single contact would be recorded, but every month or at least and more frequently is something unusual occurred, one of the members of the treatment team would undertake to summarize what had taken place in the form of a progress note and he would relate it to the treatment going to that patient.

Q Is there any recognized physical laboratory test for schizophrenia?

A No, sir.

Q Are there theories in that area?

A Yes, sir, a number of them.

Q How was the diagnosis generally established absent physical tests?

A The diagnosis is established on the basis of a thorough going history of the person's past life, sort of a longitudinal history of things and then a cross sectional history, namely, how the person is today, what does he look like, what does he talk about, how does he feel, what is his

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judgment like, how does he perceive reality, and in addition to that there are psychological tests that can be used, and in a twenty-four hour setting you can add a lot of other things, such as how this individual relates to a social group, at a dance, or what he does in the occupational therapy department may reveal him.

Q Are there frequent disagreements as to diagnosis among the staff themselves? Can I change that question, Dr.? Dr., would disagreement be extremely rare or would it happen fairly often?

A Well, is this a general question or does it relate to this specific --

Q Yes, sir. It does not relate to specifics, a general question.

A I would say generally it would not be infrequent for people to hold different opinions, particularly early in their experience with an individual.

Q Did you look at the staffing of Mr. Donaldson in 1964?

A Yes, sir.

Q Were there doctors in excess of the two or three on that staff?

A Yes.

Q Did they all conclude that at that time he was mentally ill or a paranoid schizophrenic?

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A They all concluded he was mentally ill, and the diagnosis I cannot recollect. If I was to guess I would say yes, paranoid schizophrenia.

MR. MAHORNER:

I would like to have a minute, Your Honor.

THE COURT:

Yes, sir.

is that correct?

A Yes, sir, except I think he was referring to a hypothetical person rather than Mr. Donaldson.

Q Let's assume if we change the hypothetical and that there is no evidence that he was ever rejected from military service, and that there is no evidence that he was ever in a mental hospital in Philadelphia, would it then be consistent with your understanding to assume an even shorter period of hospitalization?

A It would weigh in that direction, yes.

Q Now, Mr. Mahorner asked you some questions

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about a thing called schizophrenia.

Is one of the major symptoms or indications of schizophrenic an inability to communicate with other people?

A I guess frequently it is.

Q And did you see any evidence in this record of that symptom from Mr. Donaldson?

A I certainly did not.

Q I believe you testified that you saw no

evidence in the record that would support a diagnosis of schizophrenia. Let's assume for the minute that the hospital's diagnosis of schizophrenia was correct. Let's assume that a minute, although I know I don't find any evidence to support that, even if that diagnosis of schizophrenia was correct, do you see any evidence in the record that would justify confining him to Florida State Hospital for fifteen years?

A No.

MR. ENNIS:

No further questions, Your Honor.

MR. MAHORNER:

I have a couple of recross.

RECROSS EXAMINATION

BY MR. MAHORNER:

Q I will ask you to look in the record. That

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is a 1964 discharge -- excuse me, 1964 staffing. How many doctors do you see on that staff?

A One, two, three, four, five, six.

Q Now, what happened at the end of that ten day observation period?

A I thought I was going home. I had seen a doctor one time near the end of the ten days, talked to this

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doctor for a few minutes, and the doctor didn't say one way or the other, but the fellow patient said, well, you will be going home tomorrow.

I thought I was going home, back with my family and back to work.

Q But did you go home?

A I did not.

Q Where were you taken?

A I was put in a van with some other people and taken to the state hospital nearby at Marcy.

Q How do you spell that?

A M-A-R-C-Y. It is near Rome, New York.

Q At that point you were an involuntary patient?

A That is right. I objected.

Q You objected to that?

A I objected.

Q Now, Mr. Donaldson, during the three months you were at Marcy State Hospital, what type of treatment was given to you?

A In the first place, the second day I was there I was put in an open ward and I had the privilege of the grounds all of the time I was there.

Q Yes.

A The doctor came through the ward everyday. He didn't have time to stop to talk to us, but a couple of

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days I would walk along beside of him and ask him about going home.

Do you want me to tell everything that --

Q Well, let me just ask you this. Did you ever receive electroshock therapy?

A Yes, sir, I did.

Q That is also referred to as electro-convulsive therapy?

A That is right.

Q Now, did you go yourself to those electroconvulsive therapy sessions or

were you taken there?

A I went voluntarily.

Q And for how many of those did you go?

A Twenty.

Q And those were given over a period of approximately three months?

A They were given two a week, and the last week, the week of the last one I went home from the hospital. I drove the car home from the hospital.

Q Now, Mr. Donaldson, after you were discharged from Marcy State Hospital in early summer of 1943, were you ever again a patient in a mental hospital between that time and the time you were admitted to Florida State Hospital?

A No.

Q Now, with the exception of those two

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hospitalizations, the Marcy State and Florida State, at anytime in your whole life have you ever been hospitalized as a mental patient?

A No.

Q Mr. Donaldson, would you please explain briefly to the Jury what you did with your

My home was where I hung my hat. I paid my bills, never asked charity, never caused any trouble, and I

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thought it was my privilege as an American citizen to go anyplace in this country and work at any job that I cared to.

Q Let me ask you this question, Mr. Donaldson. You said you never caused any trouble. Let's be more specific.

Have you ever been convicted of any crime?

A No.

Q Have you ever in your entire life injured or threatened to injury yourself?

A No.

Q Or any other person?

A No.

Q You are absolutely sure of that?

A I am positive of that.

Q Now, Mr. Donaldson, where were you living in late 1953 and early 1954?

A Los Angeles.

Q Were you employed at the time?

A Yes.

Q Where did you work?

A Northrup Aircraft.

Q What kind of work did you do there?

A I was working in the warehouse in Lynnwood, later moved over to one of the towns on the border, on the coast.

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I was rated as a crater and packer. My job was to cut the wood for the crates from the blueprints and the other man made the crates and packed the airplane parts.

Q Now, Mr. Donaldson, while you were in Los Angeles in late 1953 and early 1954, did there come a time when you experienced any particular difficulty?

A Yes.

Q What was the nature of that difficulty?

A They were of a physical nature, being in very good health most of my life when I experienced something that seemed a little bit unusual, I decided to do something about it.

Q What did you do about it?

TRANSCRIPT OF TESTIMONY

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would pull out his 3 x 5 file card and ask me what ward are you on, and I would tell him, and he would ask, are you taking any medication, and I would tell him no. Are you working anyplace, and my answer was no, and then that was all.

One time when I came back after the escape, which was a particularly outstanding interview for me, he called me down.

When I came back I took a shower, I scratched myself pretty badly in my legs going through brambles and the attendants reported the scratches and so I was called down.

He came to the office and Gumanis said drop your pants. I did. Several years later when I complained about not getting any psychiatric consultations he pulled

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out his 3 x 5 card and he read off all of the dates that he had seen me, including that date when he told me to drop my pants. He said those were psychiatric interviews, psychiatric treatment.

Q Mr. Donaldson, during the nine years that Dr. Gumanis was your attending psychiatrist, what was the total amount of time you spent talking with him?

A I would say it couldn't have been over two to four hours. I would say it would be closer to two hours. I have

no way of estimating it accurately.

Q Now, during your entire period of hospitalization, did Dr. O'Connor or Dr. Gumanis ever ask you what you considered your strengths to be, your strong points?

A No.

Q Pardon Me?

A No. No, sir.

Q Did either Dr. O'Connor or Dr. Gumanis ever tell you what they considered the short range goals for you to be?

A No.

Q Did they ever tell you what they had in mind as the long range goals for you?

A No.

Q Did Dr. O'Connor ever discuss group therapy with you?

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A No.

Q When was the group therapy first made available to patients in your department?

A I don't remember the year, exactly, but it could have been around 1964 or 1965.

Q Did you go?

A No.

Q Did Dr. Gumanis ever explain to you what group therapy would do to improve your condition?

A No.

Q Did Dr. Gumanis ever tell you who would run the group therapy sessions?

A No.

Q All right, let me ask you this question, Mr. Donaldson.

Did Dr. O'Connor or Dr. Gumanis ever refuse to see you when you requested permission to speak to them?

A Many times.

Q One of them or both of them?

A I beg your pardon?

Q Was it just Dr. O'Connor who refused to see you?

A Both Dr. O'Connor and Dr. Gumanis, from a period -- it was late or sometime in May of 1957, which would have been the third month I was on the general ward.

Neither Dr. Gumanis nor Dr. O'Connor ever say me at my request from that time until the time I left the hospital.

After the first few years, I stopped asking, but they never say me for all of those years at my request, and during those years there were a few things that I wanted to discuss with them.

Q All right, now, did there ever come a time later on when you did talk with Dr. Gumanis, though not at your request? He called you down to the office?

A Yes, when he called me down to the office, yes.

Q Let me ask you this. Did you ever discuss with Dr. Gumanis his refusal to see you on those occasions when you requested to see him?

A Yes.

Q What did he say?

A He said he talked only to the patients that he wanted to.

Q And that was the substance of that discussion?

A I beg your pardon?

Q And that was essentially the substance of that discussion?

A That's right.

Q I would like to talk for a little while,

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Mr. Donaldson, about the living conditions at Florida State Hospital.

A About which?

Q The living conditions.

A All right.

Q How many patients were there in Department A while you were there?

A When I went there in 1957 there were about 1,300. When I left ten years later it was 1,000 or less.

Q How many psychiatrists were there for that department?

A There was just one so called psychiatrist when I went there, and for a period of six months or so during the ten years there was at one time three, I believe. Generally, there was just one.

Q Now, in the buildings you lived in Department A, were those buildings locked?

A Yes, sir.

Q Were the wards you lived on locked?

A Yes.

Q Were there metal enclosures on the windows?

A Yes, padlocks on each window.

Q Approximately how many beds were there in the rooms where you slept?

A Sixty some beds.

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Q How close together were they?

A Some of the beds were touching, the sides touched, and others there was room enough to put a straight chair if we had had a chair.

Q Did you have chairs in the dormitory areas?

A There wasn't a chair in the room I was in.

Q All right, was there an outside exercise yard for your department?

A Yes, there was a space outside the building, a good sized space enclosed with a cyclone fence topped with barbwire.

Q Did you go out to that exercise yard?

A I went out from time to time when the other patients went out.

Q Was there ever a period of time when

you did not go out to the exercise yard?

A Yes, there was one period in particular when nobody went out for two years.

Q Now, Mr. Donaldson, you were civilly committed. You had not been charged with any crime, is that right?

A That is right.

Q Were there criminal patients on your ward?

A There were criminal patients on the ward.

Q Approximately what percent of the population on your ward were criminals?

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A Looking back, roughly, I would say a third. I do not know the figures for the whole department.

Q Let's just talk about your ward.

A Okay. I would say about a third in the wards I was in.

Q Now, did you sleep in the same rooms as the criminal patients?

A Yes.

Q Did you get up at the same time?

A Yes.

Q Did you eat the same food?

A Yes.

Q In the same dining room?

A Yes.

Q Did you wear the same clothes?

A Yes. The entire operation of the wards I was on was geared to the criminal patients.

Q Let me ask you, were you treated any differently from the criminal patients?

A I was treated worse than the criminal patients.

Q In what sense were you treated worse?

A The criminal patients got the attention of the doctors. Generally a doctor makes a report to the court every month.

Q For the criminal?

A On the criminal patients, and that would be

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a pretty heavy case load. It didn't give them time to see the ones who weren't criminal patients.

Q Was there a place on the ward you had access to for keeping personal possessions?

A No, not at that time.

Q What did you do with your personal possessions?

A I kept mine in a cedar box under the mattress of my bed.

Q Was there a place in the wards where you could get some privacy?

A No, not anytime in all of the years I was locked up.

Q Were you able to get a good nights sleep?

A No.

Q Why not?

A On all of the wards there was the same mixture of patients. There were some patients who had fits during the night. There were some patients who would torment other patients, screaming and hollering, and the fear, always the fear you have in your mind, I suppose, when you go to sleep that maybe somebody will jump on you during the night.

They never did, but you think about those things. It was a lunatic asylum.

Q Mr. Donaldson, let me ask you a few questions

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about employment or jobs you had at Florida State Hospital.

Now, when you first were transferred to the general wards, did you volunteer to work?

A I volunteered to work.

Q Why did you do that?

A I was told that was a way to get out, to show that you were willing to cooperate.

Q Now, were you assigned to a job?

A I was assigned to a job in the kitchen, the general kitchen.

Q Who assigned you to that job?

A Dr. O'Connor.

Q Did he talk to you about that particular assignment?

A No.

Q Did he talk to you afterwards about that particular assignment?

A No.

Q What were your duties in the kitchen?

A The first week I was there I took care of several tables. I cleaned them after

the meals, dumped the garbage and then we mopped the floors.

After I had been there about a week, I was put in charge of one of the steam tables. There are two steam tables.

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It was my job to see that the steam tables were set up with the proper food and then I helped serve the food.

Would you like to know about the food that we had?

Q Sure. Tell the Jury.

A Generally, because I had some intelligence I was put in charge of dishing out the meat. The specialty of the house was bone stew. Sometimes we had it twice a day.

We never had a day without it, and when that was hot in the steam table you couldn't stand the stench.

I had to stand like this to serve it. That is what the people had to eat.

Another thing that I saw about the food was the man who served the butter. We didn't have butter everyday. It was called for two meals a day. This one man --

Q Was he a patient?

A He cut the butter, it was in --

Q Was he a patient or employee?

A He was a patient.

Q All right.

A And shortly after I worked at this time, I worked in the kitchen, he went to the T. B. Hospital. He was the type of person that never washed his hands.

Another thing about the food at this time,

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there were circles of green mold like that on the bread. The meat was rancid. Some of the food was good, but most of it was unpalatable.

Q Did you have any responsibility for checking the menus?

A Yes.

Q All right.

A The menu for every meal was posted on the bulletin board in the kitchen and a copy was sent here to be put on file in Tallahassee.

My job when I started on the steam table, I was instructed to check the menu posted and what was sent to the

steamtable.

The first day I said we have not got such and such. We probably got -- we had bone stew that meal, for instance, instead of roast beef or something like that.

I reported that to the lady in charge. She said that is all right.

The next meal we didn't get the butter that we were supposed to, and I told her, and she said that is all right.

One more meal they switched the vegetables, we probably had blackeyed peas instead of a fresh vegetable, and I told her that, and she said that is all right. I never told her I know --

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Q What were your working hours on that job?

A From 6:00 o'clock in the morning to 7:00 o'clock that night. I didn't work all of that time, but we were locked in the kitchen all of that time.

Q How many days a week?

A Seven days a week.

Q Were you paid anything?

A No.

Q How long did you work that job?

A Until the middle of the first year there.

Q And then what did you do?

A Then I wanted to work outside. I had never worked, been confined. I wanted to get outside on the grounds, so to be transferred to a job I had to quit this one.

They wouldn't transfer you while you were on a job, so I quit the job and stayed out in the yard one day, and sent a request to the doctor and I was put on outside detail.

Q Now, did any doctor discuss that job with you before you were assigned to it?

A No.

Q Did any doctor discuss how that job would relate to your treatment plan?

A No.

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Q What were your duties on that job?

A We did everything that somebody else didn't do. We planted flowers, and strawberries that I told you about. We trimmed trees. I did carpentry, dug ditches, made plumbing repairs and

painting, and so forth, and watered the lawns.

Q How many hours a day did you work at that job?

A We were on the job three hours in the morning and three in the afternoon.

Q Did you get paid?

A No.

Q How long did you hold that job?

A Until I escaped in late December, early December.

Q All right, now, when you came back they kept you in a locked ward from then on, is that correct?

A That is right. They put me on the so called back yard.

Q What is the back yard?

A The back yard consisted of a building of four wards, two which contained the patients who were the furthest gone.

There are some people who are entirely out of their minds. They were there and they were also used as punishment wards. I was put back there.

Q What did you do?

A And I volunteered as a house man.

Q What did you do as a house man?

A Made beds, scrubbed the floors, washed the walls and assisted the retarded people to take showers and things like that.

Q Did you get any pay for that?

A No.

Q Did any doctor talk to you about that job assignment.

A No.

Q How long did you perform that job?

A There and after I was transferred to the front yard until the middle of the following year.

Q Now, did there come a time when you quit working?

A Yes.

Q Approximately when was that?

A That was in the summer of 1958.

Q Why did you quit work?

A I looked around, observed my fellow patients and the ones who seemed to get the most respect from the attendants

Q Did Dr. O'Connor ever tell you what he thought the medication would do to improve your condition?

A No.

Q Did Dr. Gumanis?

A No.

Q Did Dr. O'Connor ever try to persuade you to take medication?

A No. Dr. O'Connor respected my belief in Christian Science. He told me as long as I did not cause any trouble on the wards I wouldn't have to take medication.

Q All right, did Dr. Gumanis ever try to persuade you to take medication?

A One time.

Q Describe that, please.

A I was called down to Dr. Gumanis' office to

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have a conference with him, and Dr. Rich, the Clinical Director.

I went over certain parts of my case. Dr. Rich turned to me and said you will have to take medication, and he said I will promise you this, if you will take medication for six months and then wait

another six months, I will release you from the hospital.

He said I will guarantee this, and Dr. Gumanis at that time said go on, Kenneth, he says, take it, you have tried other things, go on, try the medication.

Q Okay. I would like to ask you a few questions, Mr. Donaldson, about staff hearings or staff conferences.

What is a staff Conference?

A A certain number of the doctors at the hospital, the times I were there, I would say about eighteen doctors sat around a long table. The doctor who was presenting the patient sits at the end of the table with the patient.

Q Are those staff hearings regularly scheduled for patients?

A They are regularly held, yes, probably every week. I imagine every week for each department.

Q I am not asking you if the hearings were every week. I am asking you does a patient get a staff conference at regular intervals automatically?

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A No.

Q Was that up to his attending doctor?

TESTIMONY OF KENNETH DONALDSON - Cross Examination

Could you give us a page reference, please?

MR. MAHORNER:

No, sir, I am sorry. When you said hospital record, it is in the Marcy State Hospital record.

MR. DEAN:

What page of that, sir?

BY MR. MAHORNER:

Q It is the first page, sir. Do you recognize

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your handwriting there?

A Yes, sir, that is my handwriting.

Q I will ask you to read the third paragraph of that letter, sir.

A I maintain that the misuse of political powers was the sole reason that I was given the course of electroshock treatment, not misuse on my part, naturally, as I never had any powers, but at the direction of someone in the General Electric Company or in the state government at the time or in the national government at the time.

Q Now, that letter was written many

years after you left Marcy, wasn't it, or what year was it written?

A That was written in 1954.

Q Do you recall that paragraph?

A I do.

Q What type of political power was involved in your incarceration at Marcy, sir?

A Again, I will ask you, do you want my belief or do you want a statement of fact?

Q I am willing for you to give your belief.

A My belief. I believed that someone objected to remarks I had made about the conduct of the war. I have no exact memory of what happened at that time. I have no way of knowing how much of my memory returned after I got the electroshock treatments. I maintained that statement as a

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belief at that time. I had no facts.

Q Would you look at this letter showing the signature, Kenneth McCullough, sir, which is the second letter in that record?

months in a New York State Hospital.

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New York Hospitals were at that time infested with Communists and in a generally disorganized condition similar to the one prevailing in Chattahoochee up to this year.

I was subjected there to some psychiatric horseplay which left me a mental partial cripple for about ten years.

Q Go ahead, please, sir.

A Before I was completely cured I was introduced to Christian Science which I give full credit for my excellent health today.

Q Did you go on to say that politics was entirely responsible?

A I beg your pardon?

Q Did you go on to say that politics was entirely responsible?

A In the following years I began the reading of law in my spare time and took an interest in politics. Because of the latter I was subjected to -- I was subjected to ridicule when the report of my former hospitalization became broadcast.

Q Go ahead, if you will.

hospital that worked for him would do it.

Q Did you write to Mr. O'Connor expressing the gratitude that you were not forced to take drugs due to your Christian Science study?

A Did I write him about that?

Q Yes, sir.

A No, sir, there was no occasion to write him about it.

Q If you would turn to page 186, to the report in front of you.

A 186?

Q Yes, sir, to see if that record refreshes your memory. I believe 186 would have to be the first records. There is so much that happened that I cannot recall all of the letters.

A I wrote that. That is an honest statement. Do you want me to read it?

Q No, sir. I just want to get you to confirm it. Did you receive a letter from Travelers Aid telling you that they could no longer handle you and the doctors could best help you?

A Yes, sir.

Q If you would, turn to page 312 of the record, sir, wherein you wrote to Dr. Rogers. Do you recall that letter? I think we paper clipped everything. 315

TESTIMONY OF KENNETH DONALDSON--ReCross Examination

Q August 9, 1965?

A Yes.

Q Now, are you aware that Mr. Davis had actually examined Mr. Donaldson over a year before the date he finally wrote the letter, that is, --

A Do you mean Dr. Calhoun?

Q Dr. Calhoun had actually examined Mr. Donaldson

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over a year and a half before he wrote that letter, that is, say, in February of 1964? Are you aware of that?

A No, I wasn't aware of that.

Q But he didn't send in any report at that time that you are aware of?

A Not that I am aware of, no.

Q Now, you testified that Mr. Donaldson's mental condition did not change very much during the time he was in Florida State Hospital, is that correct?

A Yes, the changes that were noted are recorded in my report.

Q Is there something called the MMPI?

A Yes, sir.

Q Is there a test called the MMPI?

A Yes, sir.

Q Did you give that to Mr. Donaldson in approximately 1958?

A I believe so.

Q Did you give it to him very shortly before he was discharged?

A I believe so.

Q And is there any significant variation in the test scores?

A I don't think so.

Q So Mr. Donaldson was basically, his mental

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condition was basically the same man the day he was discharged as he was in 1958, is that fair to say?

A On the basis of that test.

Q All right, now, let me ask you this. You were reading from some book which indicated that it is not at all uncommon for a person diagnosed as being paranoid schizophrenic to be quite intelligent, that is true, but that is not the same thing as saying, is it, that if you are an intelligent person you are more likely

to be schizophrenic than if you are a stupid person, is it?

A I want to be sure I get this right.

Q Let's just put it this way. If you happen to be an intelligent person is there going to be a greater risk you are going to turn out to be schizophrenic?

A No.

MR. ENNIS:

I have no further questions.

THE COURT:

You can step down, sir. Is there any further need of this witness?

MR. ENNIS:

No, Your Honor. He is excused.

THE COURT:

You are excused, sir.

MR. ENNIS:

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Thank you, Mr. Davis.

(Witness excused.)

THE COURT:

the paranoid reaction category, specifically, paranoid state, not paranoid schizophrenic.

I don't see any evidence from any of the case material or test material that I have read that he is paranoid schizophrenic, and I would not in any analyzing any of the test results that I have seen here, I would never be inclined to put a diagnosis of paranoid schizophrenic on this patient.

I don't see either blind interpretation of the test which I did, or blind interpretation putting together with all of the case information which was voluminous in this case, I simply cannot see anything to indicate that he is the furthest end of the continuing paranoid schizophrenic, therefore, I would say paranoid state.

Q Dr., how much testing was done on Mr. Donaldson?

A In the hospital he was first tested a little less than two years after he came into the hospital, and he was given test batteries. That was in 1958. He was given one, two, three, four, five, six, seven, eight test batteries or eight testing periods during the hospitalization.

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He was seen by the psychologist more

than that, but on some occasions he was not tested. He declined to test, to be tested on some occasions, but generally conversed with the psychologist, so that was written up, but no tests were given.

Then in addition to that eight, we have Dr. Calhoun's evaluation which took place about midway in this stream of tests. It would be -- it is the fifth of the times that he was tested, and he was tested a total of eight times, so that includes Dr. Calhoun's test.

Q When was the latest?

A The latest testing appears to have been the last report in 1970. I am sorry, 1971. Let me correct this.

The summarization here does not include the final test which took place in 1971, so that would make it nine. It is eight without Dr. Calhoun's evaluation.

Q Dr., over this period of time did the personality profile of Mr. Donaldson change in any significant degree from the first test to the last test?

A No, I would say by and large the test results were very much the same over that period of time. Specifically, the one that you can most point to as a sort of an objective measure, the MMPI looks almost the same fourteen years later as it did previously.

Q Dr., when an MMPI is done the figures

are

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taken in graft, are they not?

A That is right.

Q And a graft remains or is charted out?

A Right.

Q Do each of those grafts appear to be the same?

A Very close. The primary graft characteristics are the same in 1958 and in 1971. The interpretation would be equivalent in those two cases, I would say.

Q Would you expect that graft to change from someone who had been committed against his will over a fifteen year period?

A I am not sure I can answer that. It would just depend. I would expect some people to deteriorate very markedly over that period of time and to show a much deteriorated response.

Q The fact that Mr. Donaldson did not deteriorate, does that say anything for him psychologically?

A In the sense that paranoid schizophrenia

is likely to be associated with a progressive deterioration with age, I would say that that would slightly tend you away from a diagnosis of paranoid schizophrenia.

Q Dr., can we turn to the diagnosis of dangerous to himself or to others for a moment.

Do you find anything in that record that would lead you to conclude, all of the testing, all of the data

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that you have before you, that Mr. Donaldson was at anytime dangerous to himself or to others?

MR. MAHORNER:

Before you answer, I respectfully request that that record be defined so as to change that you are not referring to the hospital record, but the psychological record if that is the case.

MR. DEAN:

Refer to the hospital records also.

MR. MAHORNER:

He has seen the hospital record.

THE COURT:

Are you asking about the hospital record only, the testing?

MR. DEAN:

All of his reports and all of the testing and all of the hospital records and everything he has read.

Have you seen anything in those records that would lead you to any conclusion or to a conclusion that he was dangerous to himself or to others at any period?

A I would say the overwhelming impression of the test results and the hospital record was of non-violent behavior and non-probability of any kind of acting out behavior, and I saw no evidence that he actually had acted out in any way, and I see no clear indication from the tests

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that would indicate that he would have been predicted to. In fact, he didn't.

Q Well, what is the best measure of dangerous, Dr.?

A The behvior of the patient.

Q Dr., I believe from the date you examined in Exhibit No., Plaintiff's Exhibit No. 11, which is the date supplied you from Dr. Calhoun, what three tests were given by Dr. Calhoun to Mr.

Donaldson?

A Dr. Calhoun gave first an interview of approximately an hour and a half, and then in the remaining time, about one hour, administered a brief version of the Draw a Person Test, the Thematic Apperception Test and the Rorschach.

Q Would you explain those three tests to the Jury?

A All right. The Thematic Apperception Test consists of a series of pictures about this size. Each one of the pictures is sufficiently vague so that different people might come to different conclusions as to what is going on in the picture.

The pictures are drawn somewhat sketchedly so that two different people looking at it might conclude that the person was in one case doing one thing and in another case doing another thing.

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There is a whole long series and ordinarily we draw out a sample of those pictures that seem to be most likely to be relevant to this patient's problems.

The Draw a Person Test simply requires that the individual draw a person. He is first told to draw a person and when he finishes that he says, now, draw a person of the other sex, so that whichever

one he drew before, he draws in the opposite sex.

Then ordinarily a lengthy inquiry is given on this picture to ask, you know, what kind of person is this, what would you imagine this person does, what would he do in various circumstances.

This inquiry was not done in this case. There is no indication that an inquiry was given and I don't believe that it was done.

The Rorschach, again, is a series of plates, roughly this size, a little bit smaller, that are the familiar ink blot. They are what would happen if we dropped a blob of ink on here, folded it over and then turned it back, so it is an abstract design, but by looking closely at it just as if you look closely at the clouds or trees, you can see things that sort of resembles and looks like and the patient is asked in each case to tell what the card reminds him of, makes him think of, what it looks like to him.

You record his responses and then after you

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have done that you go through and find out in detail on each one why he saw that particular thing and then there is a rather elaborate scoring system so that then you add up the scores and rate

him with respect to certain characteristics.

Now, again, on this rather brief testing, the testing period I gather was something in the vicinity of an hour to an hour an a half, which is about the time that is often given for one of the tests, so he did abbreviated testing in all three times because of the limited time.

He did not do an inquiry as I can tell on the Rorschach and he did not score on the Rorschach. He scored a few of the responses, but he did not score to have it tabulate.

Q Dr., in layman's language, would you tell the Jury the validity and the reliability of these three tests that Dr. Calhoun gave, say, in comparison to the MMPI?

A Well, in my opinion it is difficult to evaluate either the validity or the reliability of the Rorschach because each individual who administers it tends to question the patient differently, tends to assign scores somewhat differently, so that if you take the same record administered by one person and give it to five psychologists, the scores are very likely to be the same for all of the psychologists scoring.

There would be some general agreement as to

the kind of scores, but this means there is an unreliability in the scoring of the MMPI as far as the validity of the test, in my opinion the belief in the validity of the test.

Q Dr., may I interrupt you. I believe you said reliability. Unreliability in the MMPI, and you were talking about the Rorschach, were you not?

A Yes.

Q The unreliability is in Rorschach?

A Yes.

Q Okay.

A Thank you. In the Rorschach, no two people are likely to agree precisely point for point on the scoring, so you have an unreliability built in right at the very beginning on the Rorschach.

Simularly, on the TAT, bearly can you score that at all. On all three of these tests it is difficult to evaluate reliability because there is no systematic scoring system for two of the tests and only a general scoring system for the other one, so you have to consider it in terms of scoring unreliable.

In terms of the validity, it depends entirely on the sort of clinical skill of the interpreter. There is no

statistical reliability to the test. The research literature in recent years has been increasingly critical of the Rorschach as a usable test. Some of the recent reviews

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have recommended that the Rorschach be discontinued as a clinical instrument and many universities have ceased to teach courses in Rorschach at all.

Those that continue to or some of those that continue to teach courses in it do so primarily because some of the job placements require that the person know how to do the Rorschach, and some of the expectations for licensing laws still retain that, but I would say in general it is considered sort of an outmoded instrument by those people who are research oriented and who are keeping up with research.

Q Does the same thing apply to the other two tests, Dr., generally?

A Yes, the TAT and the Rorschach and the Draw a Person.

Q Dr., which psychological tests are least reliable in predicting violence or proneness for violence?

A I don't have any figures on that. I would say that most psychological tests are not very good at predicting proneness

to violence. When you are trying to predict behavior of that sort, the actual behavior of the person is so overwhelmingly important in comparison with test results that I would say observation would be your critical issue.

Q Dr., assuming that you had received a call

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and accepted employment to do psychological testing on someone in a mental hospital who was seeking his release from the hospital, what in your opinion would you do and what would be professionally proper, which test should be given?

A I would certainly include at least one objective personality test if I did also administer the projective test, which I might very well do, but I would insist on at least one objective personality test.

My own preference is the MMPI. There are other objective personality tests, but I would insist on at least the MMPI results or some equivalent of some other objective type tests to get a positive scoring.

I think I would, assuming the situation permitted it, I would want a long enough time available to administer all of the tests that I administered fully from beginning to end, and I would certainly

score and interpret the tests and prepare a report that gave the conclusions on it. I would assume that would be expected.

Q Dr., in your opinion and from your examination of these records that we spoke of, would you have ever recommended hospitalization for Mr. Donaldson?

A Let me -- are you talking about all of the records from the hospital and all?

Q Let's say in 1957 and not Marcy State.

A On the basis of the test results I doubt it.

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On the basis of the description that came from the Pinellas County, I would certainly want to do a follow up and find out the accuracy of those statements. I would be inclined to not consider this person hospitalizable in general on the basis of certain psychological tests.

Q Have you ever considered -- have you ever committed anyone or recommended anyone with this personality profile?

A No.

Q Dr., do any of these tests relate to his ability to organize his thought, his conduct?

A Well, he did have some intelligence

tests which measure his intellectual functioning and whether he can organize his thinking to that extent, the TAT requires him to respond to a pretty unstructured stimulus and to develop a story sort of from beginning to end and as quickly, if somebody has disorganized thinking process because the story has no logical beginning, no logical end, so I would say those tests clearly indicate the organization of behavior.

Q And what was his organization of behavior from those tests?

A Quite well organized.

Q Dr., have you tested many college students?

A Oh, yes.

Q Approximately how many?

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A Directly, probably several hundred. Indirectly through supervision of my students, several thousand, I suppose.

Q Are you familiar with their profiles on the MMPI testing?

A Yes.

Q Would you compare for the Jury, please, Mr. Donaldson with a college student, average college student, average profile?

A Well, Mr. Donaldson's MMPI profile is considerably more deviant than the average college student, although a sizable number of college students would have profiles as deviant or more deviant than he. If you push to a percentage, I would say at least 10 percent and probably more.

Q You have testified concerning Dr. Calhoun. You testified that he spent, I believe, an hour and a half with Mr. Donaldson and he spent approximately an hour in testing Mr. Donaldson, is that correct, sir?

A I believe that is correct, approximately that.

Q I would like for you to assume, if you would, Dr. Calhoun also spent one and half minutes with the staff, and I would also like for you to assume that he did not read the hospital record and from that I would like for you to professionally critique his examination of Mr. Donaldson,

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if you would.

MR. MAHORNER:

Your Honor, if it please, I would like that word, that question reworded. The witness is not in a position to critique the examination. What he is critiquing is the records made of the examination.

Erie, Pennsylvania. Let's move along to the substance of this case.

BY MR. DUBOSE:

Q Now, could you read to me the opinion of Dr. Ojeda?

A Yes, sir. "I agree with the examiner." In other words, he agreed that the patient should remain in the

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hospital. "I am of the opinion that efforts should be made in order to treat this patient with some intensive treatment and medication."

Q Did you treat that patient with some intensive treatment and medication?

A Mr. Donaldson at all times and all interviews refused medication.

Q How about intensive treatment?

A Sir?

Q How about --

A Intensive treatment means medication.

Q It says intensive treatment.

A Intensive treatment includes medication and electroconvulsive treatments. Dr. Adair who was his doctor at receiving

service received permission for electroconvulsive treatments, but he did not receive any because he thought he did not require any.

The only medication we could give him was either oral medication like Phenothiazine, like Thorazine or Mellaril or other type medication or give him an I. M. medication.

Q Could you explain the term I. M.?

A I. M. medication means intermuscular medication, giving it by needle, by injections, and if --

Q That was what the doctor meant by intensive

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treatment?

A That is correct.

Q He meant no --

A Either that or electroconvulsive treatments, one or the two.

Q Those were the only two things he meant?

A Including occupational therapy, music therapy, religious therapy and all of the others.

Q We will get into that. Could you turn to the staff of 1964?

A Yes, sir. That is on page -- I have it page 32.

Q Page 32, yes, sir.

A Yes, sir.

Q What is the date of that staff?

A January 9, 1964.

Q Why was that staff held?

A It could be that another letter was written by Mr. Donaldson or we just brought him up for evaluation.

Q Could you turn to pages 504, 505 and 506?

A Yes, sir. I have 504.

Q Do you see that letter?

A From Mr. Stallings who was a State Representative from Duval County at that time.

Q And he was interested in Mr. Donaldson's case?

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A Mr. Stallings at that particular time was interested in his case.

Q He made a visit to the hospital and --

A He sure did.

Q At the end of December?

A Sir?

Q At the end of December?

A Yes, sir, he came to the hospital to visit Mr. Donaldson.

Q About a week before Mr. Donaldson went to staff, would you say that?

A If you want to place it that way, yes, sir.

Q So it is quite probable, then, that Mr. Stallings influence brought about this second staff?

A If it is in your opinion that you think that Mr. -- he asked for the patient to go.

Q He asked?

A He did.

Q And you --

A I remember once we did, yes, sir. It could have been that.

Q Did Mr. Donaldson ever ask to go to staff himself?

A Mr. Donaldson didn't have to go to staff. He could have been released from ths hospital if he was not

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mentally sick by discharge. He could have got an out of state discharge.

Q And that didn't require going to staff?

A No, sir. Sometimes it doesn't require it. It was up to the superintendent's pleasure, the superintendent and the clinical director.

Q Could you turn to No's. 526 and 527?

A 526, yes, sir.

Q Is that a letter or a carbon of a letter from Dr. O'Connor to Representative Stallings?

A Yes.

Q And does that report the results of the staff of January 9?

A It reports -- what was your last question, sir?

Q Is that a report to Representative Stallings of the staff conference held on that day?

A On 524, here it says, it gives the

date that Mr. Donaldson will come to the hospital.

Q 526 and 527, excuse me.

A 526, all right, 526, yes, sir.

Q So Dr. O'Connor certainly felt that Representative Stallings wanted an immediate report on the staff?

A If you want to take it that way, yes, sir.

Q Now, let's turn back to the staff, itself.

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A In 1964?

Q In 1964.

A That is 34, isn't it?

Q Turn to page 33, the last doctor.

A 33?

Q Yes.

A Just a minute. 33.

Q Yes, would you read the quotation from Dr. O'Connor?

A "Dr. O'Connor: No question about me agreeing. The consensus of opinion is

to hold him in the hospital; that he is incompetent and considered to be dangerous to others; and that he should be held in the hospital until further improvement."

Q Now, at that staff conference none of the other doctors are recorded as having said Mr. Donaldson was dangerous, are they?

A No, it is not here. They felt that he was paranoid and incompetent, so even if he is paranoid and incompetent, he still stays in the hospital, even with those two characterizations.

Q Okay, but I am interested in Dr. O'Connor's characterization of dangerous. Do you --

A That was his personal opinion.

Q Was there any evidence at the staff, presented

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to the staff meeting in your recollection that would have given a foundation for that conclusion?

A I don't remember if this was the particular time Mr. Donaldson and Dr. Dunin had a run-in together in 1964, but, and this is the thing that may -- I think they both were banging the table, so it could have been from that.

Q Do you remember the name John Lembcke?

A Yes, sir.

Q Who is John Lembcke?

[455]

A John Lembcke was an accountant from New York, Binghamton, New York, or Utica, New York, with whom Mr. Donaldson corresponded and was trying to discharge him in his care.

Q Would you turn to 540, please?

A 540, yes, sir.

Q Now, is this a request for Mr. Lembcke to have Mr. Donaldson released in his care?

A Yes, sir.

Q Now, when you received that letter was there a note attached onto it? I believe it is No. 538.

A When I received this letter?

Q Yes.

A Or just this little clipping here?

Q Right, and is that note in Dr. O'Connor's handwriting?

A Yes, this is in O'Connor's handwriting.

Q Could you read it? I am going to pass it among the Jury, but handwriting is sometimes difficult to people who aren't familiar with it.

A Oh, what Dr. O'Connor said, yes, let me see. I guess he is referring to Mr. Lembcke and I remember about this. This man --

Q Just read from the beginning.

A The note is addressed from Dr. O'Connor to

[456]

Dr. Gumanis, and he says, "This man, himself, must not be well to want to get involved with someone like this patient, who even the recent visiting psychological considered dangerous."

Q Did you dictate this letter? It is No. 541.

A Yes, my initials are on there. I dictated it.

Q Could you just explain to the Jury the significance of the initials below?

A The initials?

Q Below the signature block.

A Well, the letters were signed by the clinical director.

Q Right.

A But the letter was composed by the physician.

Q And those, the initials J. G. below mean that you dictated the letter?

A Right.

Q Now, did you dictate that letter in response to Dr. O'Connor's note?

A Sir?

Q Did you dictate that letter in response to Dr. O'Connor's note?

A No. As to the condition of Mr. Donaldson, I thought the man was still sick at this time, because this is July of 1964 and he had recently gone to staff.

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Q Let's turn back to Dr. O'Connor's note.

A Yes, sir.

Q I don't think you read this small section down there in the lower left hand corner. Would you please read that?

A "Recommend --" I don't --

Q What does it say?

A "Recommend turn it down."

Q "Recommend turn it down", so it was --

A Dr. O'Connor was the one that was going to sign the release if this patient was discharged.

Q So it was his recommendation not to release Mr. Donaldson to Mr. Lembcke?

A I gave Mr. Lembcke a resume of the patient's mental condition and then I later on put in the wishes of Dr. O'Connor, that the, and we gave him the -- we gave him the condition how he was, a picture of his condition.

Q Now, did you speak --

A Because, excuse me, because if this patient was released to Mr. Lembcke in New York, in Binghamton, New York, Dr. O'Connor was the one that would sign the discharge.

Q So that --

A With the Clinical Director together.

Q So that Dr. O'Connor was the one who, if he disapproved of it, you might as well forget about it, is that

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right?

A That is correct. That is what it comes down to, to any superintendent of any hospital, and it is the same in any state.

Q Did you speak to the Plaintiff before you wrote the letter to Mr. Lembcke?

A I think I did. I don't recall offhand. I probably did. When did he go to staff in 1964?

Q He went to staff a good deal before that, I believe, in January of 1964.

A Because I knew Mr. Donaldson's. January of 1964, that is correct, but I interviewed him later on, too.

Q What did you know about Mr. Lembcke at the time you wrote that letter?

A What did I know about Mr. Lembcke? He just asked for some information about the patient.

Q Didn't he ask to have the patient released in his care?

A Yes, sir.

Q And you sent him a letter rejecting that request, did you not?

A Well, if the superintendent told us that he will not sign any papers discharging him, I could not do anything else. I could --

Q Do you know if --

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A I could not discharge him.

Q Do you know if Dr. O'Connor knew anything about Mr. Lembcke?

A I wouldn't know. I don't think so, because Mr. Lembcke, I think, didn't come down to Tallahassee until 1966.

Q So he had never been down here, nobody at the hospital had ever seen him, right?

A Yes, sir.

Q Now, did you think that Mr. Lembcke, and I will pull the note, must not be well to want to get involved with the Plaintiff?

A No, I cannot say that.

Q In your interrogatory -- never mind. Now, did you communicate to Dr. O'Connor that you didn't agree with him?

A I didn't say that I didn't agree with him. I thought the patient was still mentally sick.

Q Oh, you did? Well, I am talking about Mr. Lembcke.

A Oh, no, I didn't say anything. That was his personal opinion. I didn't discuss that.

Q You didn't agree with that?

A I didn't discuss that.

Q The question --

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A How could I agree when I didn't know Mr. Lembcke at that time?

Q Did you tell Dr. O'Connor that?

A I didn't tell him anything. He probably sent me this note.

Q Was he the kind of a man that you couldn't tell things to?

A Oh, yes, we talked with Dr. O'Connor, could talk to him.

Q But you went along with his decision that Mr. Lembcke was not --

A You have to go with the decision of the superintendent most of the time.

MR. MAHORNER:

Your Honor, we object to the statement as being unfair because the decision was to keep the man in the hospital. The reasons for it may vary, but when he states a question this way, he went along with his decision, and then ties it in to that note, it is unfair to the witness.

THE COURT:

Well, the question was, as I understand it, did you agree with Dr. O'Connor that Mr. Lembcke was not a proper person for this man to be released.

THE WITNESS:

We only had seven --

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THE COURT:

Well, wasn't that the intent of your question?

BY MR. DUBOSE:

Q Yes, sir.

A There was only seven lines in this letter. I couldn't form an opinion of what Mr. Lembcke was except that he was a certified public accountant. That is all I know about him.

THE COURT:

Did you or did you not agree with Dr. O'Connor?

THE WITNESS:

I had to agree with Dr. O'Connor.

THE COURT:

years and I don't see it in here.

Q Is there any indication in the record that you can see that such an investigation was ordered?

A If it was it was not in here or in my notes. That was in July of 1964.

Q I believe your letter was dated July 2, 1964.

A Sir?

Q I believe your letter was dated July 7, 1964.

A The only thing I have in here on July 7, 1964, is that Mr. Donaldson resides on ward, shows no particular changes mentally. He is still delusional and his judgement

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is poor. States he will live in Syracuse, New York, and receives Social Security of $100.00, $101.00, and Mr. Lembcke, a public accountant, wishes to sponsor him in New York. However, Dr. O'Connor does not agree with this man. That is all I wrote.

Q Would you turn to 553, please?

A Sir?

Q Page 553 in the record.

A Yes, sir.

Q Have you seen that letter before?

A I presume I have. This is the first time I have seen it. I have seen a lot of correspondence of Mr. Lembcke.

Q When you received that was No. 554 attached to it? That is the small card stapled to the front.

A Well, as I said before, Dr. O'Connor was the one that should release this patient and he gave us directions as to what to do.

Q But this note was attached to it when you got it?

A Yes.

Q Again, would you read the note to the Jury, please?

A The note, I believe must have parents consent, number one. Dr. Gumanis, I believe must have parents consent.

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Number two, patient will not stay with party mentioned. Number three, we don't know anything about party, etc. O'Connor, please answer in negative.

Q And in response to that note, did you write No. 555?

A I sure did.

Q Dr. O'Connor gave a number of reasons this time why he was turning down Mr. Lembcke, didn't he?

A I gave -- he might have given that reason, but I had my reasons, too. I thought Mr. Donaldson was ill.

Q You wouldn't have released him, either?

A I wouldn't have released him, either, no, except if they made special arrangements like have the patient follow up with psychiatric care and everything else.

Q Any other special arrangements that you would have required?

A Just about that.

Q Why didn't you mention them in your letter to Mr. Lembcke?

A Sir?

Q Why didn't you mention those requirements to Mr. Lembcke?

A I listed the requirements that Dr. O'Connor had in his note, because he was the one that was to release the patient.

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Q Why didn't you mention his requirements

to Mr. Lembcke?

A He told me to put it in a negative manner and that is exactly what I done.

Q If Dr. O'Connor said no, you didn't think it was worthwhile letting Mr. Lembcke know what his reasons were because Dr. O'Connor's no was a solid, firm no?

A I couldn't do anything because I could not release the patient. Dr. -- as I said before, Dr. O'Connor was the one that had to sign his release with the Clinical Director. They were the two that were responsible for release to another state.

Q Is there any indication in the record that Dr. O'Connor made any effort to find out anything about Mr. Lembcke or to communicate with him the reasons why he thought Mr. Lembcke would be an unsatisfactory patron of Mr. Donaldson?

A I don't recall them.

Q Just take a look at the progress notes if you want and see if you can find anything.

A Do you mean my progress notes?

Q Yes.

A I don't recall any. I don't see anything in here.

Q But didn't Mr. Lembcke, in his letter, say

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that he would be willing to give any information that the hospital desired?

A Well, if Dr. O'Connor wanted a negative answer, we couldn't go ahead and investigate Mr. Lembcke, as you say.

Q Now, did Mr. Lembcke ever visit the Florida State Hospital?

A I think he visited the Florida State Hospital during 1966.

Q And did you meet him during that visit?

A He came down to my office, I remember, I think. I recall it.

Q What was your opinion of Mr. Lembcke?

A He looked all right to me.

Q After you took Mr. Lembcke, where did he go.

A I escorted him over to Dr. O'Connor's office.

Q and Dr. --

A As far as I could recollect, now. I don't remember, but I think I did, because I could not give Mr. Lembcke an answer.

Q Excuse me. I didn't hear your answer.

A I could not give him an answer as to

the release. I talked to him about the patient's condition, what we thought about it, but I couldn't give him an answer as to release plans. He had to see Dr. O'Connor.

Q But as far as you could tell, Mr. Lembcke

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would have been adequate to manage Mr. Donaldson?

A As far as I could tell. I didn't see anything wrong with Mr. Lembcke. He talked all right to me.

Q Was there anything that Florida State Hospital provided for Mr. Donaldson that Mr. Lembcke couldn't have provided?

A I don't know what Mr. Lembcke could provide for the patient.

Q Well, what did the Florida State Hospital provide?

A Well, we tried to give the patient medication. He refused that on the basis of his religious belief.

Q So that wasn't something you provided?

A No, it was not.

Q What else did you provide for Mr. Donaldson?

A We tried to make him as comfortable as we could.

Q Could Mr. Lembcke have done that?

A It could be.

Q Anything else?

A Well, he had, shall we say, milieu therapy which included religious therapy, recreational therapy. He didn't receive much occupational therapy in our department, and other forms.

Q Let's go through those things. Religious

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therapy. He could have gone to a church?

A Yes.

Q With Mr. Lembcke, couldn't he?

A Right.

Q And he could have gotten a job, couldn't he?

A Could the patient have had a job?

Q I mean he could have gotten a job when he was living with Mr. Lembcke?

A It is possible, yes, sir.

Q So that was about the same thing as occupational therapy, right?

A Is that about the same thing as occupational therapy?

Q Occupational therapy, wouldn't it serve the same purposes?

A Well, I would say so, yes, sir.

Q And he could have amused himself any way he wanted, could he not, and that would be about the same as recreational therapy, wouldn't it?

A Yes.

Q So really there was nothing that Mr. Donaldson received at Florida State Hospital that Mr. Lembcke couldn't have given him, isn't that true?

A Well, I don't know if Mr. Lembcke could have provided him with supervision that the patient had at

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Florida State Hospital.

Q What kind of supervision did he have?

A He wasn't free to go out and express his various delusions.

Q Oh, Mr. Lembcke probably couldn't have kept him locked up, is that right?

TRANSCRIPT OF TESTIMONY

11/27/72

PROCEEDINGS

November 27, 1972

[4]

THE COURT:

Good morning. Be seated, please.

Would Counsel approach the bench, please.

(Whereupon, the Attorneys approached the bench.)

MR. DUBOSE:

We are continuing with the testimony of John Gumanis, please.

WHEREUPON

JOHN GUMANIS

the witness on the stand at the time of the recess, resumed to the stand and testified further:

DIRECT EXAMINATION

MR. DUBOSE:

Q The last time we were discussing the

possibility of release for Mr. Donaldson I am afraid we may have confused the Jury a bit. Could you explain to the Jury the different types of releases which were possible at the Florida State Hospital?

A There were three different releases.

First was furlough, which was signed by the attending Psychiatrist and the Superintendent.

The second release was an out of State discharge which was signed by the Physical Director and the Superintendent, and the third release was a competency discharge which was signed by various Doctors, the Superintendent and the Clinical Director.

[5]

Q Now comes the competency discharge, when someone received that, then all of their rights were restored. Is that right?

A They usually go to the Courts and have their rights restored. They could do it within thirty days, I believe.

Q That doesn't happen automatically in the other types of discharge, does it?

A No, sir.

Q In those types of discharge the patient could still be mentally ill could he not?

A Could be, yes, sir, especially on a furlough. We--may I explain something? We give the furlough because it is easier for the patients. A furlough is good for one year and the relatives could return the patient back to the hospital.

Q So you have, yourself, furloughed patients who were still mentally ill?

A I have furloughed patients, yes, sir.

Q So the fact that Mr. Donaldson was mentally ill when Mr. Lembcke wrote into the hospital to release him did not itself bar release of Mr. Donaldson, did it?

A May I get that question again, please?

Q Well, you said before that when Mr. Lembcke wrote in for Mr. Donaldson's release Mr. Donaldson was mentally ill still, but that alone wouldn't have been enough reason to bar?

A No, sir.

[6]

Q For a competency discharge you had to go before a Staff, is that correct?

A Yes, sir.

Q You didn't for the other two?

A No, sir.

Q What kind of power did you alone have to release Mr. Donaldson?

A The only power I had was to on a furlough, but on this particular case Doctor O'Connor knew the case for two and a half years and I had to ask Doctor O'Connor if this patient to even would have released on a furlough.

Q But normally you could have released him on furlough by yourself?

A Sometimes, yes, sir, on very difficult cases we consulted the Clinical Director or the Superintendent.

Q But in this particular case Doctor O'Connor had made it clear to you that he wanted to have the final say on release?

A He had not made it clear to me. We knew the specific cases, some specific cases that were complicated. We had to receive the permission either of the Clinical Director or the

Superintendent.

Other cases that were ordinary cases went home, we just went ahead and furloughed him ourselves and Doctor O'Connor also signed, the Superintendent signed the furlough papers.

Q But you know that Doctor O'Connor in this particular case would want to approve it himself?

[7]

A Well, I knew the case was complicated.

Q Now, how come the Plaintiff was eventually discharged from the hospital?

A Well, the patient was - Mr. Donaldson was transferred from my department in 1967 and I know that he was finally discharged by three doctors that saw him, Doctor Rodriguez, Doctor Pinell, who is in Texas now, and who was a Clinical Director at that time and from Doctor O'Connor, and Doctor Hirshberg.

Q And he didn't go before Staff then, did he?

A I don't know if he went before Staff but I would not know that for he was never in my department.

has personal knowledge of it, which he has already stated he didn't, discuss this letter with the Jury, but if you wish to read the letter to the Jury, read it. It is already in evidence.

[9]

MR. DUBOSE:

Q It is already in evidence. I just wanted to bring a conjunction. Now, you say that Doctor O'Connor knew of Mr. Donaldson's case?

A He knew of Mr. Donaldson's case because he was the attending Psychiatrist from December 1957 until October of 1959. He was not Assistant Clinical Director or Clinical Director or Superintendent. His position at the hospital was Staff Psychiatrist of Department "A".

Q So he was Staff Psychiatrist up until 1959 and where was he located in the department?

A Department "A."

Q That was the department that you are now on?

A Yes.

Q And you were on then?

A I was there with him, his associate, yes, sir.

Q And Doctor O'Connor was in charge of the department?

A Yes.

Q And he was also Plaintiff's attending Psychiatrist?

A That is right.

Q After that period you were the attending Psychiatrist?

A After that period I was, and about, at least five other Psychiatrists.

Q Who were the other Psychiatrists?

A The other Psychiatrists were Doctor Shaw,

[10]

Doctor Chacon, Doctor Haneson and Doctor Rodriguez.

Q Well, let us say that up until 1967 when he had left Department "A," what other Psychiatrists had contact with Mr. Donaldson?

A Doctor Shaw and Doctor Chacon.

Q But you had most of the contact?

Q How long was Doctor Shaw in Department "A?"

A I believe two or three years.

[11]

Q And Doctor Chacon?

A I mean Doctor Chacon, I didn't remember Doctor Shaw. It was about a year, I presume.

Q A very short period?

A I don't recall.

Q How come there are no progress notes from Doctor O'Connor in the record. Do you know why that is?

A Well, Doctor O'Connor usually did not make any notes. The only notes were when he had, when he interviewed the patient and when he had letters, the letters from 1957 to 1960 are all from the parents, from Kenneth, Mr. Donaldson, were all answered by Doctor O'Connor.

Q After that all the letters up until 1967 were answered by you, is that true?

A Right, yes, sir.

Q Even though Doctor Shaw and Doctor Chacon occasionally came into the

picture, they never corresponded with the outside parties?

A No, sir.

Q Now, if you could turn to the progress notes of March.

A What page is that on, please?

Q It is Page 66, March 5, 1964. That is at the bottom of the page.

A Yes, sir.

Q It states that Mr. Donaldson wanted $100.00 sent to his daughter in order to facilitate his discharge to the Half-Way House in Minnesota?

[12]

A Yes.

Q There is a parenthetical note here, after consultation with Doctor O'Connor it was decided that it would not be sent until arrangements for the patients release were made.

A Usually if a patient asks for a large amount of money over $30.00 or $40.00 it was up to the Superintendent or the Clinical Director to decide on that.

Q And why did Doctor O'Connor decide not to send money?

[13]

past, myself, without consulting Doctor O'Connor. If Mr. Donaldson wanted to go to his parents, that is either Kenneth refused, saying that he didn't want to go, or that he would tell me consult my lawyer, or in 1964 he brought Mr. Stallings into the picture.

Q Well, in April of 1964 you were willing to let him go to his parents. Why weren't you willing to let him go to Mr. Lembcke in July of 1964?

A I told you before that wasn't my decision. It was up to the Superintendent to decide if Mr. Donaldson was to be released to Mr. Lembcke. It was an out of State discharge and I could not sign anything like that. It was up to Doctor O'Connor and the Clinical Director.

Q And you had no opinions one way or the other in the matter?

A I could not do anything, no sir.

Q Now, if you will turn to Document No. 495, please.

A Yes.

Q We looked at the last time period was a letter to Helping Hands turning down their request to Mr. Donaldson?

A 495?

Q 495, yes, sir.

A Yes, sir.

Q Now, you said you wrote this and your initials are in the lower left hand corner?

A Correct.

[14]

Q Doctor O'Connor's initials are also there?

A Correct.

Q In what roll did he have in composing that letter?

A I told you the other day, I presume, in my deposition I said that I was of the opinion the patient would be helped from Helping Hands. I still think the patient could have been helped by Helping Hands.

Q So it was primarily Doctor O'Connor's opinion that Mr. Donaldson should not be released to Helping Hands?

A It was in Minnesota, so, I had nothing to do with it.

Q I am just trying to locate where the decision was made, not to send --

A The decision was made by Doctor O'Connor, the Superintendent, yes, sir.

Q O. K.

A And it was still made at the hospital, the policy for out of State discharges, or anything else, still in this State are made by the Superintendent or the Clinical Director.

Q Did you ever refuse to see Mr. Donaldson?

A I don't recall.

Q Did you ever refuse to see any patient at Florida State Hospital?

A Sometimes if we have meetings in the afternoon I would tell them to see me another time.

[15]

Q Did you ever refuse to see a patient that was brought to you on a stretcher because he wasn't on your list?

A We treat all emergencies at once.

Q Is that a yes or no, or did you ever refuse to see a patient?

A I have never refused to see a patient on a stretcher.

Q Does the name Joe Lewis Simmons recall any particular incident to your mind?

A Simmons?

Q Simmons, Joe Lewis Simmons?

A No, sir, but I remember the name, but I don't recall the patient.

Q And you do not recall refusing to see him when he was brought to you on a stretcher?

A I do not recall it, no sir.

MR. MAHORNER:

Your Honor , the question was worded as a statement that the man was brought and I object on that basis.

THE COURT:

The objection is over-ruled.

MR. DUBOSE:

Q Now, we have been talking about release to Mr. Donaldson's parents, and the release that required the consent of his parents?

A Yes, sir.

Q And we discussed the age of his parents.

[16]

Would you open to Document No. 496?

A Yes, sir.

Q That is a letter from Mr. Donaldson's parents, is it not?

A Yes.

Q And you answered that letter, didn't you?

A I did.

Q Doesn't the letter state that Mr. Donaldson's age, that is, the Senior Mr. Donaldson's age was 85?

A Yes, sir.

Q And you received this letter the day after you wrote to Helping Hands, didn't you, saying that he would only be released to his parents?

A In Helping Hands, this letter was written at this time, yes, sir.

Q Right. Now, when you wrote back to his parents on July 25 or June 25, why didn't you mention that Helping Hands had requested to have Mr. Donaldson

released?

A There is correspondence here that I could not--there is a correspondence further down--that there was correspondence going between the Superintendent. There is a letter to Doctor Stallings, Mr. Stallings, in Jacksonville, here. At the same time in 1963 there was correspondence being carried by the Superintendent and a Helping Hands to have the patient released.

Q I am asking you why on June 25 you didn't tell the parents that this was being done if parental permission was going to eventually be required?

[17]

A I don't think it was my position to do that. The permission, if it was to be requested in the final decision, on that would have been the Superintendent.

Q You didn't think it was worth mentioning to the parents?

A I thought that it could have been worth mentioning, yes, sir, but I was not the one to make the decision on it.

Q But the parents would have to make a decision about releasing Mr. Donaldson, wouldn't they?

A I presume he did.

Q That showed he was pretty competent, didn't it?

A He was pretty --

Q Competent. He could do things with his hands?

A Well, manual things, I presume he could have.

Q So he probably could have earned a living if he had gone out of the hospital?

A I guess so, yes, sir.

[38]

Q What is custodial care?

A Custodial care is when the patient mostly does not receive medication and he receives other types and forms of therapy, but usually it is not when he does not receive any treatment at all.

Q Now, will custodial care help a paranoid schizophrenic?

A Sir?

Q Will custodial care help a paranoid schizophrenic?

A No, sir. Paranoid schizophrenics require medication.

Q Then why --

A And other forms of therapy.

Q Then why did you order that Mr. Donaldson in a number of progress notes you say continue custodial care?

A Out of the 53 notes it is written in there into the chart, custodial care is mentioned into the first note because, and I put that in there because the patient was not receiving any medication at that time. He refused medication and the other two times I usually place this custodial care is because of the patient refused medication.

Q Well, all I wanted to know is why did you order custodial care if you knew it wouldn't do any good?

THE COURT:

[39]

He just got through telling you twice.

How many times are you going to ask him the question? Move on.

MR. DUBOSE:

Q What therapy did Mr. Donaldson receive?

A Mr. Donaldson, because he refused his medication and he also refused a few times individual and group therapy, his treatment was mostly milieu therapy which included recreational therapy, religious therapy, music therapy and other activities that the hospital could provide.

Q What does recreational therapy consist of?

A Dancing, playing instruments.

Q Hobbies?

A Sir?

Q Hobbies, amusements, a movie occasionally?

A A movie, yes, sir.

Q What did musical therapy consist of?

A Well, they went to the dances and I think some of the patients were occupied in learning how to play instruments or play with the band. They had their own band.

Q What did religious therapy consist of?

A Activities in church and the pastor and the preacher visited them at the hospital.

Q In other words, the therapy he received was to be able to go to movies, to be able to go to dances and to be

[40]

able to go to church?

A That is what the hospital records --

Q He could have received those on the outside, couldn't he?

A He could but he could also receive other forms of therapy on the outside, too.

Q To turn back to these progress notes for a moment, weren't most of these progress notes, which record contact you have with the plaintiff, weren't most of those of an administrative nature?

A No, sir.

Q Then most of them were of a therapeutic nature?

A Therapeutic and diagnostic nature.

Q I turn to your deposition, page 51, lines five through eight.

A He escaped. They had him in the agricultural department as far as I can remember and he escaped from them and then he returned back and then he was assigned to the dining room area, I believe.

Q But did he after that work on the ward, itself? He was on a closed ward, was he not?

A He did at times, Kenneth helped elderly patients, yes, sir.

Q And I think at one point stopped doing any work on the wards?

A As far as I could recall, he did.

Q And did you talk to him about that?

A No, sir, but I don't recall.

Q Well, wouldn't that have been an important point to talk to him? Didn't the fact that he had stopped working

[42]

signify that he was giving up?

A We usually do not try to force the patients to work that I know it would have been of therapeutic value to him if he continued working, but on the other hand, we do not try to force

the patients to work.

Q But you didn't talk to him to find out why he had quit?

A No, sir, I did not talk to him but I don't recall talking to him but I don't recall.

Q Now, while Mr. Donaldson was in Department A he never had grounds privileges, did he?

A Correct.

Q Why not?

A He didn't have the grounds privileges because I consulted the superintendent and he advised me not to give any and there was a history that he ran away once.

Q Now, in the progress note --

A What page is that on?

Q 11/62.

A What page?

Q The very bottom of page 65. It says asked for privilege grounds and request denied.

A Correct that I consulted Doctor O'Connor and we decided not to give him one.

Q Why did you decide not to give him one?

[43]

A Let me read my notes first. That note is on the bottom of the page.

Q The very bottom of page 65?

A Oh, 65? Is that 1962? What is the date on the note?

Q That is the very bottom, 7/11/62.

A 7/11/62?

Q Let me read it to you in its entirety if you cannot find it. Patient states that other patients called him a homo and called his family bad names, asked for privilege care, request denied.

A Yes.

Q Why did you deny that card?

A I thought that Mr. Donaldson at that particular time in 1962 Mr. Donaldson, between 1962 and 1963, was really upset.

Q He was really upset?

A Yes, sir.

Q And it was necessary to keep him on a locked ward?

A That is correct.

Q And this was a decision you reached on your own without consulting Doctor O'Connor?

A I probably did, yes, sir.

Q And you thought this was of therapeutic value?

[44]

A It wasn't a matter of therapeutic value, but it was a matter that the patient was delusional at that particular time. He wrote numerous letters at that particular time to various persons expressing that he was poisoned, chemicals were placed in his body and other --

Q And because he wrote the letter he had to stay on the ward?

A Psychotic patients do stay on the ward, yes, sir, but we try to keep them on until a remission is produced to release him or put to them on the outside.

Q While Mr. Donaldson was on the ward, did you ever observe him to be in any way physically dangerous, violent, agressive?

A No, sir.

Q So he wasn't a dangerous person?

A I wouldn't say he was dangerous. I cannot say what he would have done on theoutside but while he was in the hospital he never showed any homicidal tendencies.

Q And is there anything into the hospital record that indicated on the outside that he was --

A Well, the commitment papers state that the patient was potentially dangerous, if I am not mistaken, because of his delusions.

Q But that is the only evidence that you have?

A As far as I could remember.

[45]

MR. DUBOSE:

May I have a moment, Your Honor?

THE COURT:

Yes, sir.

MR. DUBOSE:

Now, what good did you think further hospitalization would do for the plaintiff?

TESTIMONY OF DR. JOHN GUMANIS--Cross Examination

[61]

Q When was the last time that you acted as attending physician to Mr. Donaldson?

A March of 1967.

Q Did you see him in a medical capacity after that as to staff or anything?

A I saw him at the staff during 1968.

Q O.K., then after 1967 was 1968 that one time in staff in 1968 the only time that you saw him in a medical capacity?

A Yes, sir.

Q Did the defendant ever refuse to go to a trial visit in your presence or decline to take a trial visit?

A He declined a few times, yes sir.

THE COURT:

Are you talking about Mr. Donaldson?

MR. MAHORNER:

Q I apologize to the Court and the jury. Mr. Donaldson.

A Mr. Donaldson refused numerous times saying he either didn't want to, he couldn't get along with his parents, or that he will consult and his lawyer and later on it was that he wanted to consult Mr. Stallings.

danger, but who needed treatment?

A Correct.

Q What is the primary method of treating a disorder

[66]

of the nature that Mr. Donaldson had suffered under?

A Well, in the past it was electro-convulsive treatments which he received at the Marcy State Hospital, but later on with the medication it was milieu therapy, medication, group therapy and psychotherapy.

Q Why wasn't Mr. Donaldson given medication?

A He wasn't given medication because during my first interview he told me that he belonged to the Christian Science group, and that he told me not to force medication on him, so I respected his religious beliefs.

Q Did Mr. Donaldson ever speak to you as to the Representative Stallings?

A Did he speak to me about Mr. Stallings?

Q Yes.

A Yes, sir, he did.

What did he state to you at any time specifically as to whether Mr. Stallings represented him as his lawyer, or do you recall?

A I think he told me once that he was his lawyer.

Q Now, as to -- it has been brought out, Mr. Donaldson has three children.

A Four.

Q Are you married?

A Yes, sir.

Q Do you have any children?

A I have two children, ages 4 and 2.

MR. MAHORNER:

I have no further questions.

REDIRECT EXAMINATION

MR. DUBOSE:

Q Just a couple short redirect questions.

When did Mr. Donaldson refuse to go on trial

[65]

visits?

A He refused to go on trial visits as he told me again he couldn't get along with his parents.

THE COURT:

The question was when.

MR. DUBOSE:

Q The question was when. When did he refuse?

A When?

Q Yes, sir.

A I think it was about 1964.

Q Did you record that in his progress notes?

A I don't recall, but I think there is a letter somewhere. I don't remember.

Q Did you communicate at all with his parents concerning the trial visits?

A No, sir. No, sir.

Q When did Mr. Donaldson refuse vocational rehabilitation?

A In 1967.

Q Did you record that in the progress notes?

A I don't recall. It is five years now, but it might be in the record, but I don't recall.

Q Would you just take a look? It is right in front of you, page 67, I believe, or page 66.

A Just a minute. The note on 1/20/67 says when

[69]

asked if he wishes to believe by receiving help from the vocational rehabilitation service, he stated that Mr. Stollings will have to be present and he will and will be with him at staff.

MR. DUBOSE:

No further questions.

THE COURT:

You can step down, sir.

(Witness excused)

THE COURT:

Proceed.

READING OF INTERROGATORIES TO DR. O'CONNOR

[82]

Set 1, number 38-A, do you have, one, personal knowledge or two, second-hand knowledge of any occasions during plaintiff's hospitalization when plaintiff committed or threatened to commit any act that was or would have been physically dangerous to himself or to others? No.

Set 2, number 8. During the period of March 30, 1957 to May 18, 1959, was plaintiff in any way a management problem? If so, explain each such instance in detail. If not, explain why plaintiff did not have grounds privileges during this period? Plaintiff did escape from the hospital once but as far as I know, plaintiff was not harming anyone else. In the opinion of plaintiff's attending physician, he apparently thought plaintiff was too delusional to make an adjustment outside of the hospital.

[84]

Set 3, number 40-A, did plaintiff ever cause injury of any sort to any person because of his delusions? I do not know. I have no recollection of such having occurred.

Set 3, number 60-A, had the plaintiff ever been arrested prior to his commitment to Florida State Hospital? I do not know. The committing judge would probably know.

Set 3, C, had plaintiff ever been convicted of any crime prior to his commitment to Florida State Hospital. I could not be certain. To my knowledge and recollection, no.

Set 3, 22-A, in a handwriten note to Doctor Gumanis dated 4/2/64, you wrote that "all paranoids can be plausible to gain a point -- but once out of hospital they resume their attacks on society and their annoyance of all authority. Did you write that note? Yes, sir.

Set 3, 22-B, state each attack on society which

[85]

plaintiff would have made if released on April 2, 1964. I could not know since he was not released. In my opinion, persons suffering from these disorders generally attack society verbally.

Set 3, 22-G, how would plaintiff have annoyed authority if he had been released on April 2, 1964? I am not able to conject it because he was not released on that date.

Set 3, 22-H, how had plaintiff annoyed authority prior to his commitment to Florida State Hospital? It was the understanding of the staff at the hospital that he had annoyed authority prior to entering the hospital for reasons given by the committing report for his entering Florida State Hospital. I do not know other than I believe the staff thought he had annoyed authority.

Set 3, 22-I, state every place in plaintiff's hospital record which records plaintiff's annoyance of authority. I cannot locate such, but people with the diagnosis assumed in this case can generally be expected to continue paranoid behavior.

Set 3, 35-D, under what circumstances would plaintiff have been released from Florida State Hospital? Whenever the staff of the hospital had reached the conclusion that he would make a successful adjustment outside the institution.

[86]

Set 3, 12-A, a letter dated May 30, 1957, that you dictated states that plaintiff would be unable to adjust well outside of an institution. Explain precisely what "unable to adjust well" meant.

Unable to make a living, unable to get along well with other people, unable to live outside an institution.

Set 3, 12-B, if plaintiff had been released from Florida State Hospital on May 30, 1957, what would have happened to him? I cannot conjecture about an event that did not happen.

Set 3, 12-C, state the evidence on which you base your answer to 10-B. Since he was not released on that date, I do not know what would have happened to him.

Set 3, 29-A, for what purpose was plaintiff retained at Florida State Hospital? He was retained until the staff of the hospital was convinced that he could make a successful adjustment outside the hospital and in hopes some day he would evidence that such would occur. He was retained in order to receive the care necessary for him to make this adjustment.

Set 3, 13-A, a letter dated May 11, 1957, which you dictated stated the plaintiff needed "further hospitalization before considering his release."

What good did you then feel that further hospitalization was due plaintiff? The staff of the hospital

[87]

hoped that the plaintiff could be persuaded to accept medication in order to determine whether this procedure would be beneficial.

Based on the information available to me the plaintiff's record as to patient's mental condition, I was concluding that he required further evaluation and treatment before it could be determined that he could function outside an institution.

Set 3, 13-F, what would have happened to plaintiff if he had been released on May 11, 1957? That was uncertain, but it was considered unfair to the patient to release him unless he was under suitable supervision.

Set 3, 13-G, state the evidence on which you concluded that plaintiff could not be released without further hospitalization. The opinion of the staff after going over the patient's case was that it would not be wise to release him at that time, and see answer to 13-A.

Set 3, 37-A, in the post-staff dictation following the conference of January 21, 1964, you are quoted as saying that plaintiff was "considered to be dangerous to others."

Is this quotation accurate? I am summing up the consensus of opinion expressed by others on the staff before me, not one of which believed that he should be released at that time. That is my statement of the staff's opinion and

[88]

that of Doctor Franklin Calhoun, the

psychologist from Jacksonville who examined the patient.

Set 3, 37-B, state the manner in which plaintiff was dangerous to others. This was the consensus of opinion of staff of the hospital who had just had the patient before staff, and I do not know the specifics that went into that conclusion.

Did you dictate a letter to Honorable George Stallings, Jr., dated January 9, 1964? Yes, sir.

That document is number 526 and 527 for the record.

Set 3, 39-C, does this letter report the opinions of a staff conference at which you were present? Yes.

Set 3, 39-D, on the second page of the letter referred to in 39-A, you wrote that the staff felt that plaintiff was "incapable of attending to his affairs outside of an institution without constant interference with others by his demands and allegations against them." On what evidence did the staff base its conclusion? I do not know how any individual other than myself arrived at conclusions, any conclusions I reached were based on the opinion of the staff an evidenced in the record.

Set 3, 39-E, what form would plaintiff's constant interference with other have taken if he had been

[89]

released on January 9, 1964? I have no

knowledge since it did not occur. It is just a matter of general opinion that a paranoid individual is one who bothers other people because he does not believe he is sick and his mission in life is to vindicate himself.

Set 3, 39-G, you also wrote in the letter referred to in 39-A that plaintiff might "present some degree of danger to others." On what evidence was this conclusion based? Opinion of the staff of the hospital. This conslusion was based on the opinion of the staff and of the psychologist from Jacksonville, Doctor Calhoun.

Set 3, 39-I, how would this danger have manifested itself? I do not know other than what the staff or Doctor Calhoun might have mentioned, which I do not now recall.

MR. DUBOSE:

I think that was incorrect. That was the answer to 39-H you read. I will repeat the question. How would this danger have manifested itself? Since it did not occur, it would be difficult to state in what particular direction plaintiff might injure himself. It was the opinion of the staff that anyone with his disorder could potentially be dangerous to others. I do not now know.

Set 3, 39-J, how likely would this danger to manifest itself if plaintiff had been released on January 9,

[90]

1964? I know of no way to evaluate such a question, and therefore, do not know as the conclusion was based on the opinion of others.

Set 2, 11-Q, the letter of June 17, 1963, this document number 495, states plaintiff's appearance were "the ones who are legally responsible for him."

Explain what legal responsibility meant. Cite all statutes that so place the legal responsibility. Patients committed to the Florida State Hospital at that time had designated on commitment papers whom the responsible relatives were.

Set 3, number 26-E, if plaintiff had been released to Helping Hands, on June 17, 1963, what would have happened? I do not know since such event did not take place.

Set 3, 26-F, would Helping Hands, Inc. have supervised plaintiff inadequately? I do not know. It was the opinion of the staff that the patient would require more supervision than would be expected of an organization. Apparently this was the opinion of the attending physician.

Set 3, 26-I, what did you know about Helping Hands, Inc. when the letter of June 17, 1963 was written? Nothing.

Set 3, 26-J, what attempts did you make to discover the professional reputation

of Helping Hands, Inc.? It was not my responsibility, therefore, none that I recall.

[91]

Set 3, 27-A, why did the letter of June 17, 1963, to Henry Cantwell state that plaintiff would only be released to his parents and not to any third party? Rules of the hospital state that patients are to be released only to their nearest relative who presumably would be willing to spend the time and money necessary to provide the patient with psychiatric care he required.

Set 3, 69-A, plaintiff's hospital record indicates that on March 3, 1964, he requested $100.00 of his funds be sent to his daughter so that she could come to the hospital and escort him to a half-way house in Minnesota. The record further indicates that after consultation with you the money was not sent. Is the money accurate? I presume the money was accurate.

Set 3, 41-A, did you write a hand-written note to Doctor Gumanis dated 7/6/64, presently in plaintiff's hospital record in which you state John H. Lembcke "must not be well to want to get involved with someone like this patient." Yes.

That is document number 538 for the record.

Set 3, 41-B, was it your opinion as of that date that Mr. Lembcke was not a man of sound judgment? This is an off-hand

remark made by one doctor to another doctor regarding a situation that had arisen calling for a decision to be made.

[92]

What I meant was that the man must not have good judgment in light of the fact that the visiting psychologist considered plaintiff to be dangerous. Mr. Lembcke had been acquainted, I presume by the staff with the condition of the patient.

Set 3, 41-D, was it your opinion as of that date that Mr. Lembcke was mentally ill? I had never met Mr. Lembcke. I had no opinion as to his own degree of sanity, but I only expressed an opinion to a doctor on the staff.

Set 3, 41-F, in the note referred to in 41-A, you recommended that Mr. Lembcke's request to have plaintiff released in his care be turned down. Why did you say recommend? Because there are some procedures that have to be gone through before any decision is made regarding any patient released from Florida State Hospital, and particularly any patient who had what we considered a serious mental disorder.

We do not believe some eight years ago when in the course of a normal days general business that it was the proper procedure to tell Mr. Lembcke that he could take the patient out of the hospital. Mr. Lembcke had to be investigated by the Social Service Department.

We had to have the permission of relatives and we had to have the staff's opinion that the patient was ready to be let out.

[93]

As I recall, the procedures were not carried out.

Set 3, 42-A, did you write a hand-written note to Doctor Gumanis dated 11/25/64 recommending a negative answer to Mr. Lembcke's letter of November 23, 1964? Yes, sir.

Set 2, 36, in this note you also used as reasons for denying Mr. Lembcke's request the necessity for parental consent and knowledge about Mr. Lembcke.

Why did you deny Mr. Lembcke's request rather than tell him that parental consent was necessary? Why did you deny his request rather than to ask Mr. Lembcke to supply more information about himself? I have no recollection.

In the note you write, "etc., etc.," after the reasons given for denying Mr. Lembcke's request. State all other reasons for denying Mr. Lembcke's request. I have no recollection.

Set 3, 42-E, what was the relationship between plaintiff and Mr. Lembcke? I do not know.

Set 2, 24, state in detail what transpired during your interview with John

Lembcke when he visited Florida State Hospital in Chattahoochee in May of 1966? To the best of my knowledge, Mr. Lembcke did not have an interview with me.

Set 1, 31-A, is it true that at a staff con-

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ference held on March 21, 1968, the conference recommended releasing plaintiff on conditional release for out-of-state discharge on certain conditions, including parental approval could be met. The medical report contains this information.

If so, was the decision not to follow said recommendation by you? No. This decision would have to have been made, if indeed it was made, by the clinical director. I made a statement in a memo that it appeared that Mr. Lembcke, an individual who was seeking custody of Donaldson, would not properly supervise the patient. My opinion was not a final decision on this matter.

Set 3, 43-A, did you write a hand-written note to Doctor Hanenson dated 6/17/68, contained in plaintiff's hospital record? Yes.

Set 3, 43-B, that notes states that "the record will show, I believe, we have been through this before and decided Mr. Lembcke would not properly supervise this patient."

What was the date of the prior decision that Mr. Lembcke would not properly supervise plaintiff? I do not recall.

Set 3, 43-K, name all doctors at Florida State Hospital other than yourself who felt that Mr. Lembcke would not properly supervise plaintiff if plaintiff were released in his care? I have no recollection of the names of such doctors, since it refers to a period of about 10 years ago.

MOTION FOR DIRECTED VERDICT

[97]

MR. MAHORNER:

If Your Honor please, we would respectfully move for a directed verdict at this time on the basis that the evidence before the Court conclusively shows not necessarily that Mr. Donaldson was dangerous, but it does, from a directed verdict standpoint, show substantially he was in fact sick, or there was a reasonable belief to believe that he was sick.

The law at that time prior to the passage of the Baker Act in the last year provided for the institutionalization of both the sick and the dangerous and it was a conjunctive requirement and we submit that the later change in the law or even if that law now be held unconstitutional should

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not be foundation for a many judgment against the defendants who were only proceeding in a manner that was specifically authorized.

We respectfully say to the Court that under color of law as provided in the Civil Rights Act does not mean the same thing as acting as required by law, and if you are required by law to so hold, then we suggest that there is no case.

THE COURT:

That motion will be denied. Call the jury back in.

TESTIMONY OF DR. F. G. WALLS--Cross Examination

[118]

A Very Well. I am having difficulty finding it.

Q Well, I will show you my copy, sir, so you can read from it.

A §42. I have it now. I have the copy, June 2nd.

Q Alright, now, you asked to answer some questions at that time and I call to your attention question number two which was asked of you.

The question was, "is Mr. Donaldson a danger to himself or to society?"

Your answer was, "Mr. Donaldson, so far as one can make out, has not proved himself to be a physically agressive individual in this hospital who in the usual sense of the question as we understood it could be considered dangerous."

A That is correct.

Q And it is still your opinion that Mr. Donaldson is not a physically dangerous person?

A I cannot answer that.

Q Was it your opinion at the time you answered this letter?

A Yes, sir.

Q I call your attention to the fourth question, the question was, "what treatment does he presently receive?"

And was your answer not, and I quote, "the only treatment this patient receives is that of what is

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broadly known as milieu therapy, which in the main means that he is in a totally protected environment where his every needs are taken care of and where if he becomes physically ill, medical attention is at hand."

A Yes.

Q And I believe you testified in your deposition that by milieu therapy, that phrase milieu therapy means the same thing today as the phrase custodial care used to mean, is that correct?

A I don't know.

Q Is that your understanding?

A I don't recall testifying to that.

Q You don't?

A No.

Q On page 165 of your deposition --

THE COURT:

First, is there any difference?

THE WITNESS:

No, I don't think there is a great difference, Your Honor, but I think it is a play on words.

MR. ENNIS:

Q Page 165 of your deposition when you were asked to explain briefly what milieu therapy means, did you not answer "custodial care is what we now call milieu therapy"?

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A Yes, sir, if you say so, I said that.

Q I believe Mr. Mahorner asked you something about your qualifications.

A Yes.

Q And I wasn't quite clear of the answer. You are not licensed to engage in private practice of medicine in the State of Florida, are you?

A No, sir.

Q You could not treat psychiatric patients on an out-patient basis in the State of Florida?

A No, sir.

Q We referred a minute ago to the deposition. That was the deposition that was taken approximately two weeks after Mr. Donaldson was

was discharged as having regained competency, is that correct?

A That was exactly 13 days.

Q And before your deposition Mr. Donaldson was deposed, is that correct?

A Yes, sir.

Q And, you were present and heard the answers he gave at that time?

A Possibly ten to fifteen minutes or maybe half an hour.

Q Now, was it your opinion at that time two weeks after his discharge that he was in worse mental condition

TESTIMONY OF DR. CLARK ADAIR--Direct Examination

[137]

Q Does institutionalization, itself, can that help in the cure of paranoid schizophrenic conditions?

A It is a matter of opinion. I feel that proper institutionalization and the proper kind of institution does have benefits, treatment benefits. By proper I mean that there is a good mileau which is really a treatment in itself yes, I think in cases, many, many cases are important that institutionalization itself seems to help the patient.

A Do you know from your notes if the patient refused electro-shock treatments?

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A Do I know if this patient did?

Q Yes.

A I recall that he didn't want to accept treatment but I think -- I don't know if he refused it. From my notes I suggested that I had very little intent if I had any intent of using shock treatment.

I mentioned in my notes that that was -- that would be routine in the case that I considered as ill as he was, but I don't think it was particularly indicated and he may have refused.

I probably wouldn't have given it to him anyhow, whether he refused it or not, under any conditions.

I think in my notes I mentioned that if there was an episode that I might like to have permission to use it, but otherwise, I wouldn't.

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MR. MAHORNER:

Q What is the primary method of treatment used for paranoid schizophrenia?

A Mr. Mahorner, I don't think there is any primary method of treatment. It depends a great deal on the individual patient, his needs, the degree of illness, electro-shock treatment is used, and back earlier, insulin and metrosol was used, group therapy, your activity therapy, various forms of treatment of this sort, a combination of treatment.

Q Is cheno therapy used?

A Yes, sir.

Q How much money is spent at the hospital in Chattahoochee on drugs for chemical therapy?

A Mr. Mahorner, I couldn't answer directly, without referring to the records. Medical drugs and medical supplies would be somewhere in the neighborhood of, I would say roughly about $300,000.00 a month.

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Q $300,000.00 a month?

A Yes.

Q For just Chattahoochee?

A Yes, sir. This is a rough estimate. Wait a minute, I beg your pardon, but I didn't mean a month. A year.

Q What was your last year's as head of the hospital at Chattahoochee?

A I was relieved of the responsibility of the superintendent's position in 1963. I have been serving in a dual capacity from 1957 to 1963. I had been superintendent from 1950 until the appointment of a Division Director and then continued on in both positions until 1963.

Q Now, while you were there did you have on an involuntary basis, patients that needed mental treatment, but who had not been specifically diagnoses as dangerous?

A Would you repeat the question?

Q Did you have on an involuntary basis, patients who needed mental treatment but who had not been specifically diagnoses as dangerous?

A Oh, yes, certainly, and the diagnosis of the patient as dangerous or non-dangerous might enter into whether he was released at a certain time, either on discharge or trial visits, but many patients came to the institution both on involuntary admission and voluntary admission status that

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was in need of treatment and during certain

times of their illness they would express a great deal of hostility in their delusion thinking and so forth, and at one time reacting to these as you might have a person who might be considered dangerous at a given time and not at another, or after following treatment.

Q I draw your -- I want you to look at -- do you recall ever going to a staffing for Mr. Donaldson?

A Yes, sir, I looked at the records, but I don't remember the occasion, but in 1962 apparently, I did set in on a staff conference at this time.

During that period of time while I was serving in a dual capacity when other duties would allow it I would visit certain areas of the hospital and set in on staff conferences and so forth, but this was not, you know, a regular thing because of other requirements and responsibilities.

Q Do you remember what your opinion was at staff in 1962?

A According to the staff records I agreed with the diagnosis and recommendation that Mr. Donaldson, you know, should continue treatment.

Q Now, if the hospital had a patient who was clearly not dangerous but let's say needed treatment because he was incompetent to handle his own affairs, would you keep

[150]

him there on a voluntary basis?

A On a voluntary basis.

Q Let me correct that, on an involuntary basis. This was back then. I am not talking about now.

A We have always had in effect there a procedure for releasing a patient on a trial visit. It was known as a trial visit. This was a decision made by the treating psychiatrist.

He can release the patient to family, guardian or to some responsible person who would assure the hospital of adequate care and supervision of the patient.

A large number of patients went out under the trial visit arrangement. Some were for short periods of stay and others remained out for a full year and then was discharged at the end of the year by virtue of being absent one year on a trial visit and the assurance that the patient was making satisfactory adjustment.

Persons taking patients out were supposed to report to the hospital every thirty days in writing as to the adjustment the patient was making.

Q Was it customary on a trial visit to have a person come down to the hospital to be seen by the physicians on a trial visit a person who was taking over the patient, would he be required generally to come down to the hospital?

A Oh, yes, always the person signing the trial

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visit certificate would come to the hospital and recieve the patient.

Now, in a few instances the blanks would be mailed to an individual and they would sign them and then send another person to actually bring the patient home, but in a majority of the cases, the individual taking the responsibility would come to the hospital and sign the trial visit.

Q Is it possible for a patient to need intensive treatment and yet not be dangerous?

A Well, certainly.

Q And where that type of treatment was needed you would keep them in the hospital on an involuntary basis?

A If treatment was needed and there was no -- it couldn't be provided elsewhere, either by arrangement with a private facility or in the community and treatment was needed, yes.

Q What was the procedure used as far as trial visits in relation to yourself as superintendent? Did you approve those visits?

A No, this was -- the attending physician had the authority to grant a release on a trial visit.

TESTIMONY OF DR. JESUS S. RODRIGUEZ--Direct Examination

[167]

Q Did you propose group therapy and chemotherapy?

A Oh, sure.

Q And each time the patient refused?

A Refused. He said he needed to talk with his lawyer. I don't know how to pronounce it.

Q Birnbaum?

A That is right.

Q Did the patient ever refuse a release in your presence?

A Well, the only way to release a patient is through the staff or a trial visit, but he refused trial visits. He said he wanted to go to a Court and also I talked with Doctor Paizer at that time who was a professor from the State University here in Tallahassee who was doing a research at that time and I say if he want to take this patient and give group therapy, but the patient refused.

Q Refused group therapy?

A Yes.

TRANSCRIPT OF PROCEEDINGS

11/28/72

PROCEEDINGS

November 28, 1972

[13]

(The following is the deposition of J. B. O'Connor, M.D., on written interrogatories, and was read to the Jury as follows:)

Q "Describe your professional qualifications, your professional education, training and experience."

A I graduated as a Doctor of Medicine in June, 1935 from the University of Georgia Medical College at Augusta, and then had a two-year rotating internship at the Duval County Hospital in Jacksonville. And then joined the staff of the Florida State Hospital in July, 1937. And then entered the United States Army in August, 1942, from which I was discharged in February, 1946.

I attended the School of Military Neuropsychiatry in the Spring of 1943 at Lawson General

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Hospital in Atlanta and then was appointed Chief of the Neuropsychiatric Section of the 262nd Station Hospital, which shortly sailed for North Africa and Italy.

Upon eventual release from the Army, I rejoined the staff of the Florida State Hospital in 1946 and remained until I entered partnership in 1949 with Doctor William H. McCullough in Jacksonville in the practice of psychiatry.

Because of the strenuous nature of this practice, I discovered I had hypertension on a life insurance examination and determined that I had to have a more relaxing type of practice and thereupon retired to the Florida State Hospital on the staff.

This was found to be, however, not as relaxing as I had hoped, but rather even more exacting of my health.

I remained at the Florida State Hospital, gradually being promoted to Assistant Clinical Director, then to Clinical Director, and eventually to Superintendent, which last promotion took place in, I believe, July of 1963. I remained as Superintendent until my retirement for the above-mentioned medical reasons, as of February 1, 1971.

Q "Approximately what date did your period of employment at Florida State Hospital begin?"

A Approximately July, 1937.

Q "What date did you retire?"

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A As of February 1, 1971.

Q "Was your employment between those two dates continuous?"

A No. It was interrupted by at least three and a half years by service in the United States Army during the war and by at least two years in private practice in partnership with Doctor McCullough in Jacksonville from 1949 to 1951.

Q "In what various capacities did you serve at Florida State Hospital and give the approximate dates?"

A I became a resident of the staff July 5, 1937 and then was on leave to the military service from September 1, 1942 to about February, 1946, and returned to the Florida State Hospital on that last mentioned date and remained at the hospital until joining Doctor William H. McCullough in Jacksonville in a partnership engaged in the practice of psychiatry on March 15, 1949.

I returned to the hospital from the last mentioned position again as a staff physician April 1, 1951, and was promoted to Assistant Clinical Director November 19, 1952 and then to Clinical Director July 1, 1959, and finally to Superintendent July 30, 1963, and retired February 1, 1971.

Q "Describe generally your duties in each capacity."

A Initially at Florida State Hospital my duties

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were primarily checking histories and physicals and prescribing therapy of both the psychiatric and physical needs of patients committed to the Florida State Hospital.

My duties as Assistant Clinical there were to carry out the directions of the Superintendent and the Clinical Director as regards the care and management of patients at the Florida State Hospital.

My duties as Clinical Director were of a similar nature to those just mentioned, with the addition of considerably more responsibility attached to my duties and considerably more judgment required in determining how such could best be effected.

As Superintendent I was in charge of the whole Florida State Hospital, including not only the care and maintenance of the patients, but also the maintenance of the structures of the hospital; the supervision of the new construction that would occur from

time to time, seeing that proper and adequate supplies - both medical and otherwise - were obtained at the hospital and properly distributed; the selection and guidance of the medical and nursing and ancillary staffs of the hospital; and considerable interest attached to making recommendations for appropriations and justification for same; and, of course, the day-to-day upkeep of the physical plant, which at the Florida State Hospital amounts practically to being an

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independent city, supplying and maintaining its own power and heating and lighting and water and sewage systems, and of course, the maintenance of the structures, probably something over 100 in all, that were on the hospital grounds; and attempting to see that the five or 6,000 usual number of patients were given the best care that the small staff cound furnish.

Q "Approximately what date did you first meet Kenneth Donaldson?"

A I can't say that I recall the exact date. It would be my assumption from various references to his case that it must have been in the summer of 1957 or '8.

Q What was the occasion of that meeting, and describe it briefly.

A I have no recollection of that particular meeting.

Q To the best of your recollection, what subsequent meetings did you have with Kenneth Donaldson?

A I cannot isolate and describe any such meetings. It would just be my assumption that it would be in reference to some point being raised by his attending psychiatrist, and presumably took place in the area of the hospital where the patient resided.

Q Did you ever have occasion to meet and talk with Kenneth Donaldson alone; that is, without other members

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of your staff present? If so, to the best of your recollection, describe what took place at each of those meetings."

A I recall that one of his attending psychiatrists was Doctor Hannonson, who subsequently dies while on the staff of the hospital, but I don't remember the exact incident of the meeting. I do recall that a clinical psychologist from Jacksonville, whose name I think is Doctor Calhoun, accompanied a Mr. Starling, a Representative in the Legislature from Duval County, who I believe visited the hospital at the specific request of the patient mentioned and was seen on that occasion not only by the patient, but by his attending psychiatrist, Doctor

Gumanis, and the Chief Psychologist of the hospital, Mr. Julian Davis, by myself and Mr. Starling, and I think - though I am not certain - that some other member of the staff may have been present on that occasion at this meeting in my office.

The patient himself, however, was seen alone on this occasion by Doctor Calhoun in the area of the hospital where the patient normally resided.

Q "Did you ever have occasion to reprimand Kenneth Donaldson, delivering such reprimand yourself, personally, or through your staff in such a way that he would know the reprimand was coming from you? If so, describe the circumstances."

[19]

A I don't specifically recall any reprimand.

Q "To the best of your recollection, state the approximate date that you were present at 'General Staff' concerning Kenneth Donaldson."

A I cannot recall such dates, but it would be a matter of record in the patient's file at the hospital.

Q "What occurred on these occasions?"

A It would be my belief that the same occurred as occurred on the appearance of any patient before the General Staff, consisting of the patient's case being presented by his attending psychiatrist,

the patient being called in and being interviewed by the members of the staff present, and then by the patient's exit and the secretary being called in to take down the opinions of each of the members present.

Q "To your knowledge and recollection, was Kenneth Donaldson ever presented to staff other than the above occasions in which you were present?"

A It is my understanding that he had been presented to staff on occasions when I was not present.

Q "Was 'Staffing' of an individual patient scheduled at regular intervals or was the procedure each time initiated on a need basis?"

A It was initiated by the patient's attending psychiatrist in order to determine what the consensus of

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opinion of the staff was as to whether any particular patient should be granted a release from the hospital.

MR. MAHORNER:

I would like to approach the bench with counsel a moment, Your Honor.

(Whereupon, the attorneys approached the bench.)

MR. MAHORNER:

Could you give me the last question, Mr. Reporter, please?

(Whereupon, the Court Reporter read the last question, as requested.)

BY MR. MAHORNER:

Q "If on a need basis, who would determine the need and initiate the proceedings?"

A The patient's attending psychiatrist.

Q "Were patients ever 'Staffed' at their own request?"

A That has happened at the Florida State Hospital, but would have to have the concurrence of his attending psychiatrist since he would be the one that would present the case.

Q "If so, was Kenneth Donaldson ever staffed at his own request?"

A I do not have any distinct recollection that

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this occurred, though it may have.

Q "Describe generally the staffing procedure. Would all the doctors on the Florida State Hospital be present?"

A Not invariably would all the doctors be present.

Q "How would the patient be presented?"

A I have described that previously, consisting of the case being read and discussed by the patient's attending psychiatrist, but the patient himself being brought into the room and questioned in detail by each of the members of the staff present.

Q "What was your individual function at staffing?"

A I would invariably, when present, which by no means was very often because of my conflicting other duties at the hospital, be the last to express my opinion since I did not wish any of the staff members to think that I was putting any pressure upon them to agree with my opinion.

Q "Why did you vote last, that is, after the other staff voted?"

A I thought it was the fair thing to do so they would not be intimidated by any aura of authority being present.

Q "Could you, if you wished, overrule the vote of the rest of your staff?"

[22]

A Possibly technically, but not practically, because the purpose of the staff was to obtain the consensus of opinion of the staff of the hospital as to a particular case.

Q "If you could, did you ever do so? If yes, describe the occasion, including those

occasions involving patients other than Kenneth Donaldson."

A I have no recollection of ever doing so.

Q "To the best of your recollection and knowledge, what were the procedures at Florida State Hospital during the period of your employment for release of patients on trial visits?"

A The typical trial visit was handled by the patient's attending psychiatrist, since he had the most intimate knowledge of a particular case than would other members of the staff, and would most probably have been also in touch with the patient's relatives and perhaps Social Service.

Q "Were these procedures consistently followed for all patients?"

A It is my belief that they were.

Q During the period of your employment at Florida State Hospital do you recall instances of patients, other than Kenneth Donaldson, asserting that they were wrongfully committed to Florida State Hospital because of

[23]

insufficient Florida residency? If so, how were these cases handled?"

A Yes.

Q "To the best of your recollection and knowledge, during the term of Kenneth

Donaldson's commitment at Florida State Hospital, were any investigations or efforts made by the staff of the hospital regarding transfer of Kenneth Donaldson to another state?"

A Yes.

Q "If so, describe these efforts and name the other state or states to which these efforts were directed."

A It is my recollection that the patient himself early brought this possibility to the attention of the hospital authorities and I recall, I believe, that Doctor W. D. Rogers, who was the Superintendent, took up this matter with the New Jersey Hospital system authorities and it is my understanding he received a negative reply that this patient was a resident of that state and therefore eligible for hospitalization there.

Q "Was it your professional opinion during the time that Kenneth Donaldson was hospitalized at Florida State Hospital that such hospitalization was necessary?"

A It is my belief that this is a matter that was determined by the committing court and that the commitment was therefore proper for the hospital to receive this patient,

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since it was understood that it was not the duty of the Superintendent of the hospital to question the right or wisdom of a court in committing a patient, but

rather to determine whether that patient having once reached the hospital was in such condition as to request that he be considered for release from the hospital.

Q "Was there any time during Kenneth Donaldson's hospitalization at Florida State Hospital that you did not feel that such hospitalization was necessary?"

A My concept of this case and of practically every other case at the Florida State Hospital was based upon the reports made by those members of the medical staff as to the condition of any particular patient at any particular time, and from all the information I had neither the individual physician in care of this case nor the collective opinion of the staff when considering this case on various occasions was ever to the effect that this patient had recovered from his psychiatric disability to the extent that he could manage his own affairs if released from the hospital and was considered to be mentally competent at that time.

Q "Did you believe that Kenneth Donaldson was a person in need of care or treatment and because of his illness lacked insufficient insight and capacity to make responsible application therefore?"

[25]

A I did, in view of the reports that I was furnished by his attending psychiatrist as to his mental condition.

Q "If the answer is yes, was the need that of care or treatment, or both?"

A It would be my recollection that any one of those described needs would at that time have required his remaining in the Florida State Hospital.

Q "If the answer is that he did need care or treatment, explain the nature of such care and/or treatment needed."

A Initially he was considered by the staff as unable to take care of himself in the world and also it is my recollection the staff thought that he would benefit from further treatment.

Q "Did he receive this treatment?"

A This patient on numerous occasions was offered treatment and would refuse to accept treatment that on the basis of his opinion there had never been anything wrong with his mind, including the particular times when such treatment would be offered him.

Q "If now, why not?"

A As stated above, he consistently refused any treatment and would even at times, now that I think of it, refuse certain testing to see what his condition was by the

Psychology Department.

Q "In approximate terms and to the best of your recollection, what was the patient population at Florida State Hospital when you first became employed there?"

A I don't recall the exact figure, but it would be my estimate that it was approximately 5500 patients, but I cannot be sure because I know that at one time during my stay there, there was 6800 patients and had dropped down to about, I believe, 4800 at the time I left.

Q "What was the patient population at Florida State Hospital at the time of your retirement?"

A My recollection is that it would have been about 4800, but this is a matter of official record, which can easily be obtained from the records which I do not have.

Q "During the time that you were a staff member at Florida State Hospital, and later as an administrator, did you ever assert a conscious effort to reduce the patient population at Florida State Hospital? If so, what sort of effort did you make?"

A I certainly did constantly, and I think the hospital records will reveal that the patient population showed a constant decrease during the time that I was an administrator at the Florida State Hospital. The efforts were chiefly manifested by a constant attempt to get more patients released from the hospital and to make every effort

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to see that such was accomplished, keeping in mind that there was also an obligation on the part of the staff not to release those patients whom we did not think had a good chance of adjusting in society.

Q "At the time that you first became employed at Florida State Hospital, how many doctors were on the Florida State Hospital Staff?"

A I don't recollect the exact figure, nor was it my duty to do so, since I was just a member of the staff at that time, but it would be my belief that there was probably a dozen.

Q "When you retired, how many doctors were there?"

A This again is a matter in which I have no exact recollection, but it is a matter that can easily be determined since there is official information contained by the Division of Mental Health Office in Tallahassee and at the Florida State Hospital. My educated guess would be that there must have been something around twenty-five.

Q "As an administrator, did you ever assert a conscious effort to obtain additional staff doctors?"

A I certainly did, and even put advertisements in various medical publications, announcing a need there to increase the staff of the hospital.

Q "If so, how did you assert this effort?"

[28]

A As described above and by frequent correspondence with various potential and actual applicants.

Q "During the term of Kenneth Donaldson's commitment at Florida State Hospital, was he ever examined by a psychologist or psychiatrist who was not a member of the hospital staff?"

A Yes. As has been previously described such a psychologist practicing in Jacksonville accompanied Representative Starling to the hospital at the express request of the patient, so I understand.

Q "If so, describe to the best of your knowledge and recollection the occasions and the individuals who conducted the examinations."

A This has been described above in the same group of questions, but I will repeat that Representative Starling and a Doctor Calhoun, introduced as a clinical psychologist from Jacksonville, visited the Florida State Hospital after first contacting my office and being given every assurance that every facility available would be made at their convenience. They did this at the hospital together one Saturday morning and met in my office, and others present besides myself, and those mentioned were Doctor Gumanis, the patient's attending psychiatrist, and Mr. Julian Davis, the Chief Psychologist of the hospital, who was quite familiar with this case, and I believe someone else was present, but I

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cannot be positive as to which individual it was, since it has occurred so long ago, though I do believe that the hospital records might reveal this fact if needed.

Q "If such examination did occur, were the results communicated to you?"

A Only indirectly, since this psychologist was present for the benefit of the patient, and presumably for Mr. Starling, and if I recall correctly they were communicated to me by my receiving a copy of a letter consisting primarily of a brief report by Doctor Calhoun to a lawyer in Quincy.

Q "If so, what were the results?"

A The results are a matter of record and it is my present recollection that the report indicated that this patient in this psychologist's opinion was by no means recommended for discharge from the hospital and, if I am not in error, indicated that such a proceeding might be dangerous. Again this is a matter of record which has already been made available to the attorneys on both sides of this case.

[39]

Q "Did you, in any of your capacities, require individualized treatment plans for patients at Florida State Hospital, and, if not, why not?"

A I don't quite understand the exact meaning of the question since it would be my presumption that every patient in the hospital had an individualized treatment plan developed by his own attending psychiatrist and at times discussed by the general staff of the hospital.

Q "Did you in any of your capacities, require periodic review of treatment plans for patients at Florida State Hospital, and, if not, why not?"

A The general staff of the hospital as a part of its function would often be involved in giving their collective opinion as to treatment of various cases in the hospital.

Q "Describe every effort that you, in any of your capacities, made to create a humane environment at Florida State Hospital."

A It is my belief that at all times and every day in the year attempts were constantly being made to give what has been called above a humane environment, both as to the living conditions, as to the nourishment of the patients, as to the bedside care of additional other patients, and similar such activities, if these can be called humane.

[46]

Q "Indicate Plaintiff's treatment plan by page and date."

A This would be incorporated no doubt in progress notes made by the patient's attending physician and not by me, since it was not my function at the hospital to attend to such matters in every case in the Florida State Hospital over the years.

Q "Indicate every modification or review of Plaintiff's treatment plan, by page and date."

A Every time the patient appeared before the General Staff of the Hospital or every time the patient

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appeared before the psychologists of the hospital and every time the patient appeared before his own attending psychiatrist would indicate either the need or the lack of need of any particular change in the plan of his treatment. These were matters that were not under my immeidate care.

ORAL CHARGE

November 28, 1974

THE COURT:

Ladies and gentlemen of the Jury, now that you have heard the evidence in this case and the arguments of counsel it is my duty to give you the instructions of the Court as to the law which is applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in this case.

You are not to single out any one instruction alone as stating the law, but you must consider the instructions as a whole as the law applicable to this case.

Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict in this case upon any other view of the law than that given by the Court, just as it would be a violation of your sworn duty as jurors in this case as judges of the facts to base a verdict upon anything except the evidence that have been presented in this case.

Justice through trial by jury must always depend upon the willingness of each juror to speak the truth as to the facts from the same evidence presented to all of the

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jurors and to arrive at a verdict by applying the same rule of law as given in the instructions of the Court.

The Jury should consider each instruction given to apply separately and individually to the Plaintiff and to each Defendant in this case and I would remind you that this case is a suit against three individuals as Defendants and each case should be considered by you separately.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the complaint of the Plaintiff, also claims contained in the complaint, and the answer and defenses raised by the Defendants. You are to perform this duty without bias or prejudice as to any party.

Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow

the law as stated by the Court and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth and holding the same or similar stations in life. The law is no respector of persons. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

[4]

Specifically, you are instructed that you are to weigh the credibility of the Plaintiff, Kenneth Donaldson, just as you would weigh the credibility of any other witness. The fact that he was for many years a patient in a mental hospital would not in and of itself justify you in disregarding his testimony if it is otherwise believable.

Now, the burden is on the Plaintiff in a Civil action to prove every essential element of Plaintiff's claim by a preponderance of the evidence in the case, the Jury should find for the Defendants.

To establish by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in

the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue have been prepared by a preponderance of the evidence in the case the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them and all exhibits received in evidence regardless of who may have produced those exhibits.

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There are generally speaking two types of evidence from which a jury may properly determine the truth as to the facts in a case.

One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the Jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence which does produce such belief in your minds.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

Statements and arguments of counsel are not evidence in the case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the

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Jury must, unless otherwise instructed, accept the stipulation and regard that fact as proven.

There has been some stipulations of fact placed before you. Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts and events which

may have been judicially noticed; and all applicable presumptions stated in these instructions.

Now, any evidence to which the Court has sustained an objection may not be considered by the Jury in any manner in arriving at a verdict in this case. Anything that you may have heard or seen outside of this courtroom is not evidence and it would be entirely disregarded by you in arriving at a verdict in this case.

You are to consider only the evidence in this case as presented from this witness stand, but in your consideration of the evidence you are not limited to the bald statement of the witnesses.

In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proved such reasonable inferences as seem justified in the light of your experience.

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Each party has introduced into evidence certain interrogatories of the Defendant, Dr. O'Connor, that is, questions, together with answers signed to and sworn to by this party.

A party is bound by his sworn answers.

By introducing an opposing party's answers to interrogatories, however, a party does not bind himself to these answers, and he may challenge them in whole or in part or may offer contrary evidence.

During the trial of this case, certain testimony has been read to you by way of deposition, consisting of sworn written answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath, in the form of a deposition. That testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the Jury, in so far as possible, in the same way as if the witness had been present, and had testified in person.

Now, you, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the

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witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand.

Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the Jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy

results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

The opinion of a doctor as to the condition of a patient may be based entirely upon objective symptoms, revealed through observation, examination, tests or treatment; or the opinion may be based entirely upon subjective symptoms, revealed only through statements made by the patient; or the

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opinion may be based in part upon objective symptoms, and in part upon subjective symptoms.

To the extent that any opinion testified to by a doctor is based upon subjective symptoms described to him by a patient, the Jury may of course consider the accuracy of the patient's statements, in determining the weight to be given the doctor's opinion.

The Plaintiff in this case claims damages for personal injuries, alleged to have been suffered or sustained by him as the result of the deprivation, under color of state law, statute, regulation, custom or usage of a right and privilege and immunity secured to plaintiff, both by the Constitution of the United States, and by an Act of Congress providing for equal rights of all persons within the jurisdiction of the United States.

Section 1983 of Title 42 of the United States Code, which is the applicable statute involved, provides that any inhabitant of this Federal District may seek redress in this Court, by way of damages, against any person or persons, who under color of state law, statute, regulation, or custom, knowingly subject such inhabitant to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.

Now, the purpose of the statute just outlined to you, I will explain to you.

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treatment during the particular period or periods Plaintiff refused such treatment.

In order to prove his claim under the Civil Rights Act, the burden is upon the Plaintiff in this case to establish by a preponderance of the evidence in this case the following facts:

That the Defendants confined Plaintiff against his will, knowing that he was not mentally ill or dangerous or knowing that if mentally ill he was not receiving treatment for his alleged mental illness.

Second, that the Defendants' then and there acted under the color of state law.

Third, that the Defendants' acts and conduct deprived the Plaintiff of his Federal Constitutional right not to be denied or deprived of his liberty without due process of law as that phrase is defined and explained in these instructions, and fourth, that the Defendants' acts and conduct were the proximate cause of his injury and consequent damages that he suffered.

Now, I mentioned the word that the Defendants knowingly acted in the last instruction. An act is knowingly done

if done voluntarily and intentionally and not because of mistake or accident or any innocent reason.

Now, the Defendants in this action have claimed and are relying on the defense that they acted in good faith.

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Simply put, the Defendants contend they in good faith believed it was necessary to detain Plaintiff in the Florida State Hospital for treatment for the length of time he was so confined.

If the Jury should believe from a preponderance of the evidence that the Defendants reasonably believed in good faith that detention of Plaintiff was proper for the length of time he was so confined then a verdict for Defendants should be entered even though the Jury may find the detention to have been unlawful.

However, mere good intentions which do not give rise to a reasonable belief that detention is lawfully required cannot justify Plaintiff's confinement in the Florida State Hospital.

As a corollary Plaintiff here need not show malice or ill-will to prove his action under the Civil Rights Act. All that is required is that he demonstrate state action which amounts to an actual

deprivation of constitutional rights or other rights guaranteed by law.

As to this defense of good faith, the burden is upon the Defendants to prove this defense by a preponderance or a greater weight of the evidence in the case.

By acts done under color of state law, not only where the State officials act under color of law, that is, state law, not only where the officials act within the bounds

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or limits of their lawful authority, but also when such officers act outside of and beyond the bounds of their lawful authority.

In order for unlawful acts of an official to be done under color of any law, however, the unlawful acts must be done while the official is purporting or pretending to act in the performance of his official duties, that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official and the unlawful acts must be of such a nature, and be committed under such circumstances, that they would not have occurred but for that, that the person committing them was an official purporting to exercise his official duties or powers.

Now, as you will note, the federal statute which the Defendants have alleged to have violated covers not only acts done by an official under color of any State law, but also acts done by an official under color of any regulation of the State, and even acts done by an official under color of some State or local custom, so the phrase under color of State law includes acts done under color of any State law or any regulation or any State or local custom.

You are instructed that a person who is involuntarily civilly committed to a mental hospital does have a constitutional right to receive such treatment as wil give

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him a realistic opportunity to be cured or to improve his mental condition.

Now, the purpose of involuntary hospitalization is treatment and not mere custodial care or punishment if a patient is not a danger to himself or others. Without such treatment there is no justification from a constitutional stand-point for continued confinement unless you should also find that the Plaintiff was dangerous to either himself or others.

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PLAINTIFF'S EXHIBIT NO. "1"

INFORMATION BLANK
FOR
FLORIDA STATE HOSPITAL

(To be fully filed out by the physicians of the Examining Committee when the patient is before them, attached to the Commitment papers and sent with the patient to the hospital.)

Social Security No. _____

Full Name of Patient Kenneth Donaldson

Sex Male Color white

Marital State: D Religion ___ Age ___

Occupation Painting and carpenter work

War Service _____ Height 5 ft. 9 Inches

Weight 165 lbs. Where born Erie Penn.

Date: Day ___ Month May Year 1906

Father's Name William T. Donaldson

Where Born Kingston, N. Y.

Mother's Maiden Name Marjorie K. Whitbeck

Where Born Kingston, N. Y.

How long has patient been in State of Florida? about 4 years

Has Legal Guardian been appointed? No.

Name of Legal Guardian ___ Address ___ City _

Name and relation of person in case of serious illness or death of Patient _____

William T. Donaldson

Street Address Belleair Village Trailer Court, A Street, Largo, Florida

Has Patient ever been admitted to a Mental Institution? State Institution Marcy, New York

If so, give name and date about a year 1946-47

Has any accident, disease, condition, environment, or method of living in your opinion contributed to or caused the Patient's mental condition? _____

Are any criminal charges pending against Patient? No If so, nature of charges _____

Tentative Diagnosis _____

/s/J. O. Norton ,M.D. Address Dunedin,FL

/s/Virgil D. Smith,M.D. Address Clearwater,FL

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FLORIDA STATE HOSPITAL

Chattahoochee, Florida

ADMISSION SHEET

Name Mr. Kenneth Donaldson Date

Date Hosp. No. A-25738

Date Committed January 3, 1957

County Pinellas Date of Admission Jan. 15, 1957

Home Address Belleair Village Trailer Court

"A" Street, Largo, Florida

Birthplace Erie, Pennsylvania

Date of Birth: Day Mo. May Yr 1906 Age 50

Nearest Relative Mr. William T. Donaldson

father Address Belleair Village, "A" Street

Largo, Florida Guardian Address

Sex Male Race White Nationality American

Ht 5'81/2" Wt. 165 Occupation Painting and Carpentry

Religion Unknown Marital State D

Resident of Florida - About 4 years

War Service unknown Prev. Hospitalization

State Institution, Marcy, New York

Father's Name William T. Donaldson

Birthplace Kingston, New York

Mother's Maiden Name Marjorie K. Whitbeck

Birthplace Kingston, New York

Former or subsequent admissions, furloughs, escapes and discharges:

Escaped 12/17/57 Ret'd Escape: 12/18/57

Discharges FSH 7-31-71
(Competency)

General Staff Conference
Consensus of Opinion: Hold
April 6, 1962 : mek

General Staff Conference
Consensus of Opinion: Hold
January 9, 1964 /cb

Staff Meeting
July 30, 1971
Recommendation: Discharge with Competency
MJH/vgg

General Staff Conference
Consensus of Opinion: Recommended release on trial visit or out of state discharge
March 21, 1968 IH/cb

Commitment papers state: "He is incompetent by reason of paranoid schizophrenia, is now a resident of Pinellas County; that his incompentency is acute and chronic; particular hallucinations being auditory and visual; that his propensities are delusions; that his age is 50; that he does require mechanical restraint to prevent him from self-injury or violence to others; he is indigent and is eligible to be committed as such."

EXAMINING COMMITTEE: J. O. Norton, M. D., and Virgil D. Smith, M. D., and Wilmer James.

#2 Kenneth Donaldson A-25738 Admitted:1/14/57
Age: 50 History Given:1/22/57

COMMITMENT DATE: This 50 year old white male was admitted here 1-14-57 from Pinellas County, Florida

COMMITMENT PAPERS STATE: "He is incompetent by reason of PARANOID SCHIZOPHRENIA; is now a resident of Pinellas County; that his incompetency is acute and chronic; particular hallucinations being auditory and visual; that his propensities are delusions; that his age is 50; that he does require mechanical restraint to prevent him from self injury or violence to others; he is indigent and is eligible to be committed as such."

ADMISSION NOTE: Patient admitted 1-15-57; new patient, from the County seat of Clearwater, in the County of Pinellas. There are no Criminal Charges against the patient. Document stated that the apparent cause was PARANOID SCHIZOPHRENIA CHRONIC. His hallucinations are auditory and visual; his propensities are delusions.

Patient started the interview by stating that the whole situation was ridiculous. There was no reason for him to be here whatsoever. And one thing that I must promise that I give him no medicines, since he had been somewhat associated with the Christian Science movement he had decided that his new attitude toward life did not require any medicines.

Asked how he happened to come to the hospital, to tell me the details of it, the patient said he believed his father was behind it, he wasn't sure. Anyhow, he was arrested, and he doesn't know why. Then finally put in two days solitary in the Clearwater jail. Later he was taken out and put in the hospital section. He saw two doctors, one for one minute, and one for exactly three minutes, and then he came before the judge. He then repeated at this point that the whole thing was ridiculous. From hospital, he wrote to the Governor and to three newspapers, demanding that he have a court hearing. Finally the judge told him he could have an attorney, so he arranged to have the attorney come to the jail, and the judge and the attorney discussed his question, his probelm. However, the doctor's didn't show up. He wanted to have the doctors there on the stand so that they would be questioned. "I wrote an autobiography, you see, and some people, I suppose, would have been hurt by it. I was in the state hospital in New York State, had ECT. That was the Marcey State Hospital for three months in 1943. I received a full course of 20 ECT's. I didn't need them; it was all a misunderstanding. It happened on my job. At that time I was run down; I was a bit sick; had had some sort of a lapse. I don't know what it was, when they found me wandering around in the street. I signed the voluntary for ten day observation at the request of the judge.

#3 Kenneth Donaldson A-25738
History Continued

There was a little trouble there. Then two doctors signed the statement, and also my wife, that I should go to the hospital. I didn't blame my wife for that; she didn't know the difference. The treatment certainly didn't do me any good. It confused my memory, that's all."

"There is a certain gang who is spreading a lot of slander about me. They 'tend to put a fellow on the job with me, who works on me, and now it's got so when I get on these jobs and quit, it's only because they are up to it again." At this point I asked the patient who these people were who were probably scheming against him. He explained that a group of people, most of them Republicans, the rich Republicans. They knew of many of his ideas, and accepted and threw up their red caps for him and then when he was of no more value, they turned against him, and started this funny business. He said not all Republicans were against him, just a group of them. "I have written a number of letters which are of extreme interest, and I am sure you would appreciate, to Eisenhower, and several from the White and Head of the Labor Party, and Senator Russell, and several others, and I have given them many good ideas which they have accepted and used; ideas of the sort of thing they could use in the Foreign Policy and to deal with labor difficulties in the states."

At this point it should be pointed out that the patient had been living with his parents in Florida for only a short period of time. He had come down here to finish his autobiography; was from Philadelphia; that he really belonged in the North. He mentioned he had had a lot of difficulty with jobs again. That's what these were; he went on that he had had many jobs - painters, contractors, etc.

The patient was born in Erie, Pennsylvania, left there at the age of six where he attended high school in Syracuse. He went on from there for a year and a half at Syracuse University where he studies engineering. At the moment, he claims he is taking a home study course in law, but hasn't yet completed it. He left the University after a year and a half, said he didn't have any interest in it; was an honor student while in high school, but didn't have any interest when he got to college. Went home after college, and did nothing for about five years. "I wrote some, did a good deal of writing, stayed home for about four or five years."

Shortly after this period, the patient got married. It was during the depression. He moved to Auburn, New York and ran a service station for his father. At that time, his father had lost his job, and they opened this together.

#4 Kenneth Donaldson A-25738
History Continued

It was shortly after that, that the service station business folded up, and the patient tells the story of reasonably steady work for 13 and one half years. While married, he had three children. The oldest boy is in the Navy, the other two, one is a girl, aged 17, and one is 14. They live now with their mother and her new husband in Arizona. The patient was divorced 8 years ago. He said his wife simply decided she wanted to get rid of him, and there was nothing to it in Arizona, and all she had to do was go to Court. She also got the children. He paid for the children for two years after that divorce, but after that she freed him because she wanted to get it off her income tax. It made enough difference so that he didn't lose anything by it, and she looked after the three children. He has not seen them for some years.

At this time he was married, the patient was living in Arizona. He left there, went back East, Syracuse, fixed up the house and stayed home for a number of years. Then he took his family, that is, his mother and father, and they all went back to Arizona.

The patient states that it was about 7 years ago, while he was in Arizona, that the whole sky fell in, and got him into this trouble, and people began to use slander against him. That is when he started writing his autobiography in self defense.

Asked about religion, the patient is not directly associated with the Christian Science movement; has read a little about it, and has heard a little about it, but obviously knew nothing in particular. His opening remarks did not suggest an actual Christian Science orientation. The patient was asked further about his admission here. He said it was only that they believed that he had some sort of sex trouble. At this point the patient said that he felt that some one was putting poison in his food of some sort, and this also happens, he mentions, while in Los Angeles in about 1953. He went to the Psychiatrist about that and the judge, and etc. They had an investigation, he claims, and they checked his urine and found a trace of codine in it. He hadn't taken any codine, so he knew it was quit correct that people had been feeding him things to affect his sex organs. He mentioned, incidentally, at this point, that he was under a different name while in Los Angeles.

The patient gives nothing more in the way of a medical history that

#5 Kenneth Donaldson A-25738
History Continued

two operations for hernis, and scarlet fever at the age of 6, nothing else of any significance.

The patient in the beginning, was extremely resistent to interview, this had all been a gross mistake, but soon would up, and was very anxious to give a detailed story of it all. Very much of a mixed story of a man who apparently broke down while in University after a reasonable school adjustment. Stayed home for five years, finally got married, made a reasonable adjustment, except that during that stage he apparently had a severe nervous breakdown, Paranoid Schizophrenic Episode, was treated with ECT in a mental hospital in New York. Following discharge from there, he has moved about quite a lot, and it was only a few years later that he began to get the feeling that a lot of people were slandering him because of his, stealing his ideas that he had forwarded to Washington. He was apparently carried along with his concept for some number of years, and it has almost completely interrupted job progress. Each job he goes to he runs into the same trouble. At the same time, people are trying to put poisons in his food, etc.

Content: Numerous Paranoid delusions, no special obsessive compulsive traits noted.

Mood: Patient was serious and rather aggressive. There is perhaps some flattening, but nothing specific that could be noted in this respect.

Memory and Orientation: Appeared quite normal, and appeared quite normal, and appeared better than average intelligence.

SUMMARY:

Summary: The man at age of 46 apparently broke down somewhere in the age of adolescence and since that time has had treatment and made just a marginal adjustment. having difficulty in getting a job, and in job situations, and when he has gone, the picture is one of withdrawal and of Paranoid delusions, and there is possibility of auditory and visual hallucinations.

PHYSICAL EXAMINATION:

PHYSICAL AND NEUROLOGICAL EXAMINATION: Were completed. Blood pressure 120/180. All findings within normal limits. There is nothing to indicate CNS disturbance.

DIAGNOSIS:

22.3 SCHIZOPHRENIC REACTION, PARANOID TYPE 000-x24 300.3

CHA:MP

#6 Kenneth Donaldson A-25738
History Continued

LABORATORY FINDINGS:

Urinalysis: Color-Yellow, Cloudy; Spec. Gr.-1.024; pH-6.5; Albumin-Neg.; Sugar-Neg; Acetone-Neg; RBC/HPF-Rare; WBC/HEF-0-2; Misc.-Much Mucus; Epith. Cells-Few. 1-16-57

Examination of Feces: 1-16-57 Consistency-Formed; Ova and Parasites-None Found.

C.B.C. 1-17 Blood Sugar-107 Mg%; V.D.R.L.-Neg; Bromide-Neg.

3-23-57 Transferred to General Wards from G-6.

A. 193(a)

FLORIDA STATE HOSPITAL
WHITE MALE DEPARTMENT

August 16, 1957

Mr. H. M. Dean Supervisor
White Male Department

In conformity with General Memorandum No. 18, this is to request the assignment:

of Kenneth Donaldson, A-25738

Patient to do detail work

for me at Horticulture Dept. (without

privileges

I agree to give Mr. Kenneth Donaldson,

A-25738

Proper supervision and be responsible

for and return to Wards by: 5:00 p.m.

Signed /s/

Position

(with)
Approved for this work (without) ground privileges:

/s/ M.D. August 16, , 1957

Accepted and Assigned

August 16, , 1957

A. 193(ai)

NOTE:

Ground privileges cover west of waterworks road to Sawmill and North to U.S. #90 to a point South of Eastern Boundary of the Satsuma grove, then along said line North of opposite and rear premises of residence of F. D. Palsgraaf thence East to Sawmill North fence line.

A. 193(b)

FLORIDA STATE HOSPITAL
WHITE MALE DEPARTMENT

March 25, 1957

Mr. F. D. Bailey Supervisor
White Male Department

In conformity with General Memorandum No. 18, this is to request the assignment:

of Kenneth Donaldson A-25738

Patient to do Detail Work

for me at General Kitchen

I agree to give Mr. Kenneth Donaldson A-25738

Proper supervision and be responsible for and return to Wards by: 6:00 p.m.

Signed /s/

Position

Approved for work (with) (without) ground privileges:

M.D. 3-25-57

M.D. 3-25-57

Note: Ground Privileges cover west of waterworks road to Sawmill and North to U.S. #90, to a point directly South of Eastern Boundry of the Satsuma grove, then along said line North of opposite and rear premises of residence of F. D. Palsgraaf thence East to Sawmill North fence line.

A. 194

[985]

Mr. Kenneth Donaldson A-25738
GENERAL STAFF CONFERENCE
April 2, 1962

Doctor Gumanis:
SUMMARY:

This is the case of Kenneth Donaldson, white male, age 54, who was committed from Pinellas County on January 3, 1957, and was admitted to Florida State Hospital on January 15, 1957.

Past history indicates he was born in Erie, Pennsylvania on May 1, 1906, and had lived in Florida four years prior to his commitment. His occupation is listed as painter and carpenter. He was hospitalized at the Marcy State Hospital in New York during 1943 for a period of three months and received ECT. He was diagnosed Dementia Praecox, Paranoid Type.

On the Receiving Service in Florida State Hospital, he was delusional and paranoid, with defective insight and judgment. He believed that the Republicans had stolen many of his good ideas which he had recommended to the Foreign Police Association. He also felt that they had attempted to poison him by putting chemicals in his food.

On the General Wards he refuses his medication, and spends most of his time writing letters to various officials and demanding his transfer to a New Jersey or a Pennsylvania State Hospital. Otherwise, he is cooperative and has caused no other trouble.

He is being presented today for evaluation and further disposition of his case. He refuses to be furloughed to his parents and definitely does not answer any of their letters.

POST STAFF DICTATION:

The summary is as given. Kenneth Donaldson has been ill for the last fifteen years. He was hospitalized in the Marcy State Hospital in New York during 1943 for a period of three months and received ECT, and when released was on convalescent status. On admission here he was still delusional and paranoid, insight and judgment defective, expressed ideas of reference and other delusions. He spends most of his time writing letters to various officials, and I believe he enjoys doing this. The writer believes patient is still psychotic and should remain in the hospital.

MR. CUNNINGHAM:

I believe this patient still has a paranoid psychosis and should remain here.

DOCTOR OJEDA:

I agree with the examiner. I am of the opinion that efforts should be made in order to treat this patient with some intensive treatment and medication.

DOCTOR FERNANDEZ:

I agree.

DOCTOR ERDAG.

I agree that this patient needs treatment, although he refuses it. He should remain here.

[986]

Re: Mr. Kenneth Donaldson A-25738
GENERAL STAFF CONFERENCE
January 9, 1964

Doctor Gumanis:
SUMMARY

This is the case of Kenneth Donaldson, white male, aged 55, who was committed from Pinellas County on January 3, 1957, and was admitted to the Florida State Hospital on January 15, 1957.

The past history indicates that he was born in Erie, Pennsylvania, on May 1, 1906, and had lived in Florida four years prior to his commitment. His occupation is listed as a painter and carpenter. He was hospitalized at the Marcy State Hospital in New York during 1943 for a period of three months and received electroshock treatments. He was diagnosed Dementia Praecox, Paranoid Type.

On the Receiving Service of the Florida State Hospital he was delusional and paranoid, with defective insight and judgment. He believed that the Republicans had stolen many of his good ideas which he had recommended to the Foreign Police Association. He also felt that they had attempted to poison him by putting chemicals in his food.

On the General Wards this past year he has shown no particular changes. Basically he is still delusional with ideas of reference. He now has Representative Stallings from Duval County representing him.

He is being presented today for evaluation and further disposition of his case. He refuses to be furloughed to his parents, and definitely does not answer any of their letters.

Post Staff Dictation:

This patient has been hospitalized here since 1957. His past history reveals that he was hospitalized for a period of three months at the Marcy State Hospital in New York, and received electroconvulsive treatment. After that he was placed on convalesence care in the care of his wife. Since his admission here he has spent most of his time writing letters to various officials explaining to them about his hospitalization. He definitely is still paranoid. He has ideas of reference against his parents, with whom he refuses to correspond or hear from the doctor about their correspondence. Since his last presentation, I do not see any change in this patient. I believe he should remain here. We have tried in the past to furlough him to his parents, but he definitely refuses this. I know even if he is released to his parents he will require supervision. I don't think he is mentally competent at this time to be released. Diagnosis is the same, Schizophrenic Reaction, Paranoid Type.

Doctor Hanenson:

This is a case of paranoia, who has been hospitalized in the past. This afternoon he is very hostile. He shows evasiveness. Every question is answered, "This is a long story". The patient is still very

sick mentally, and I do not believe that he is ready to be released, even on a Trial Visit basis because he will never accept any supervision. He is incompetent and I diagnosis him as a Paranoia State. I believe he should remain in the Hospital.

Mr. Davis:

I think he is a paranoia and has been since he has been in this Institution. I think he should remain in the Hospital.

Mr. Cunningham:

I agree that he should remain here.

Doctor Chacon:

Basically he has shown no insight. He is paranoid and incompetent and should remain in the Hospital.

Doctor Dunin:

I agree with the examiner.

Doctor Erdag:

I also agree that the patient does not show any change in his mental condition. He still remains paranoid. He uses denial mechanisms as a defense and I also believe he is not ready for a Trial Visit.

Doctor Ravenet:

I agree.

Doctor Rich:

I agree

Doctor O'Connor:

No question about me agreeing. The consensus of opinion is to hold him in the Hospital; that he is incompetent and considered to be dangerous to others; and that he should be held in the Hospital until further improvement.

CONSENSUS OF OPINION:

HOLD -- He is incompetent and considered to be dangerous to others and should be held in the Hospital until further improvement.

/cb

GENERAL STAFF CONFERENCE
Re: Mr. Kenneth Donaldson, A-25738
March 21, 1968

The above named patient was presented before the General Staff Conference this date. The following doctors were present: Doctors Hanenson, Dunin, Lopez, Ponsdomenech, Cespedes, Rich and Gumanis.

Diagnosis: Schizophrenic Reaction, Paranoid Type.

CONSENSUS OF OPINION: RECOMMENDED RELEASE ON TRIAL VISIT OR OUT OF STATE DISCHARGE.

/vgm

[989]

Staff Meeting
Re: Mr. Kenneth Donaldson A-25738
July 30, 1971

Doctor Hirshberg:

Mr. Kenneth Donaldson is a 65 years old divorced man who was admitted to Florida State Hospital on January 15, 1957, on a commitment dated January 3, 1957. He was admitted under Section 394.22, Florida Statutes, following adjudication of mental incompetency.

He has a history of hospitalization in the Marcy State Hospital in New York in 1943 when he was approximately 37 years of age. He had electroshock treatment at that time. Subsequently he became divorced, had lived in Arizona for a while, and then came to Florida with his parents. He tended to think that people were slandering him, stealing his ideas, or threatening to put poison in his food, and as his adjustment at home evidently deteriorated his father applied for his hospitalization.

When I met with him on July 26, 1971, we were in the supervisor's office of Department C. He appeared to have the physical vigor and health appropriate to his age. He was pleasant and he spoke with me in a direct, logical and coherent fashion. We discussed his hospitalization, and he talked about this in a reasonable

way with many suitable and appropriate comments which indicated an intellectual competency with somewhat complex facts. He said that if he were to leave the hospital, he would be able to take a bus to Tallahassee and register at a hotel and await the appearance in Court which is to be scheduled sometime in August. On the basis of his demonstrated assurance that he could look after himself if he were to leave the hospital, that his thinking was clear and logical, that he had a realistic appreciation that the transition from the hospital to community life would be challenging, that there was no defect of his intellect, that he had a successful adjustment in managing ground privileges, was not in need of medication, it was my impression that as long as he did not wish further treatment, that he should be discharge. When I told him this, he asked to reach his attorney, and he then placed a long distance call to New York City to his attorney to inform him of my wish to bring him to Staff because of my opinion that he could be discharged. The next day, we learned that his attorney had instructed him not to go to staff.

It was my belief that the patient should not remain in the hospital in any prolonged way, if the need for hospitalization had terminated, merely because his attorney told him to. On the other hand, in view of this man's long-standing hospitalization and the challenge he would face in adjusting if he were to leave the hospital against his will, I was willing to give him time to

think over the prospects of leaving at this time. I then asked Doctor Jesus S. Rodriguez and Doctor Octavio Penell, the Florida State Hospital Clinical Director, to independently evaluate Mr. Donaldson on the question of his readiness to leave the hospital. I have now received the extensive findings of these two psychiatrists, and they concur with my own. Accordingly, it is our decision that Mr. Donaldson be given a competency discharge from Florida State Hospital. I talked with Mr. Donaldson in the Suprevisor's Office of Department C at 1:00 p.m. today and he said he wanted to leave the hospital and would depart tomorrow for Tallahassee. He did not want after-care contact with any mental health agency whatever.

DOCTOR PINELL:

Concurred with Doctor Hirshberg.

DOCTOR RODRIGUEZ:

Concurred with Doctor Hirshberg.

RECOMMENDATION:

Discharge with competency.

MJH/mg/vgg

[1002]

Donaldson, Kenneth A-25738

PROGRESS NOTES

3-25-57: Patient appears to be old paranoid with hospitalization for 3 months, at the Marcy State Hospital of N.Y. Appears to be in remission at present time. Apparently refuses medication because he belongs to the Christian Science Group. Continue custodial care. Dr. Gumanis/hh

7-23-57: Patient writes continuously letters and states he will write a book about hospitals when he is released from F.S.H. Resides on Wd.#6, and works in general kitchen. Dr. Gumanis/hh

12-18-57: Patient was returned from escape while working the Horticulture Department. States he is tired of waiting for a release. No injuries except for small abrasion on lower extremities. To Wd.#8. Dr. Gumanis/hh

9-2-58: Patient is a 51 year old paranoid who again requested that he be released. Treated at Marcy Hospital of N.Y. with E.C.T. During interview overtalkative, delusional, well oriented in all spheres. States he is a native of Philadelphia and would like to obtain a position in the above city. Psychological examination ordered for our files. Dr. Gumanis/hh

12-11-58: Resides in Wd.#1, no work. Writing short stories complaining constantly about his N.Y. papers. States the attendants are delaying his papers, appears paranoid and delusional to writer, Continue custodial care. Psychological examination not satisfactory. Dr. Gumanis/hh

3-21-59: Patient today is complaining that certain friend in Tuscon Arizona is not receiving his letters. There are no changes in his mental condition he still is delusional and paranoid. Believes his letters to his daughter are not mailed, and he is not mentally ill, judgment and insight defective, continue custodial care. Dr. Gumanis/hh

4-23-59: Resides on Ward #1, no work. No changes in mental condition patient still appears delusional and paranoid to writer. Complaining that someone stole his short stories, continue custodial care. Dr. Gumanis/ep

5-22-59: Patient today asked that a registered letter be mailed to his sister in Arizona, he had a $1.00 enclosed. the matter was brought to Dr. O'Connor attention and it was decided that it be send by ordinary mail no changes in mental condition, refuses to take any type of medication, states he is not sick, judgment and insight grossly impaired. Dr. Gumanis/hh

7-30-60: Reveals no changes mentally, he is delusional paranoid, he still wants to be moved to a private hospital in New Jersey, he still refuses to write to his parents. This patient is still psychotic and requires further hospitalization. Dr. Gumanis:jwl

10/18/60 No changes, continue care on the wards. Dr. Gumanis/jwl/cb

4-17-61: Reveals no essential changes in his mental condition. He is delusional and paranoid. Persists he not a resident of Florida, Psychological examination ordered, also referred to Social Service. Dr. Gumanis/jwl

6-1-61: No changes mentally, he is still delusional, and his judgment is poor. Dr. Gumanis:jwl

[1003]

Donaldson, Kenneth, A-25738

PROGRESS NOTES

7-26-61: Pt. stated he would like to be transferred to New Jersey, because he was railroaded to F.S.H.. Belives that people poisoned his food with codine in the past, is also mad because he pays $75.00 mo. for maintainance and other pts. do not pay. Also states that he is mistreated because he does not work on the wards. The only solution he has is to be transferred to a private institution in New Jersey or have his 25 year old son furlough him to California. Later he states the third solution is to break away from this hospital, but he will not escape because it is against his priciples. In conclusion this patient has shown no changes since the last interview, he is basically delusional and paranoid. Dr. Gumanis: fn

8-30-61: Patient was interviewed today. He had a lengthy (5 pages) letter which was discussed in details. Well written at the beginning of it was becoming disorganized and at the end showed full paranoid content against masons, KKK etc and centering all of his ideation about the fact that he was a "hard-shelled yankee." Patient has absolutely no insight and believed that because he "ate well, sleep good, not violent to others," etc. should be released from the Hospital. He even denied being mentally ill in the past when he had to be Hospitalized in N.Y. and given a series of E.C.T. Possibility of taking medication was discussed but patient refused

and asked no to be "forced to him". He was explained that unless he was convinced of his being mentally ill would probably be of little benefit in his particular case. Possibility of out of state discharge was discussed (two daughters living in Arizona) and patient accepted it. Dr. Char: jwl

9-25-61: Mr. D. was seen today for the purpose of forming a group for "Group Therapy". Mr. D. Absolutely refused to participate on the grounds that there is nothing wrong with him. Dr. Char:jwl

1-6-62: Pt. stated there are three ways for him to get out of the Hospital. First, transfer to N.J. second, discharge from the Hospital on an out of state discharge. third, to escape. Was quite emphatic in that this was his last year in this institution. Son and daughter haven't answered letters about a T.V. and he doesn't want to go on T.V. to his parents, in Largo, Pa. Patient still hopes the Supreme Court will free him thru a Dr. friend in N.Y. I believe pt is still basically delusional but he is more calmed and collected than in the past.Continue care on the wards. Dr. Char/ga

3-13-62: Pt. is writing varios letters to officils. Psychological examination ordered. Dr. Gumanis/ga

4-3-62: Resides on ward #8, shows no particular changes mentally, he is still delusional and paranoid with impaired judgment. He has no other object in his life than his transfer to New Jersey State. Still persists he is a New Jersey resident

and refuses to submit to injustice-
Continue custodial care. Dr. Gumanis;ml

6-13-62: No improvement, patient is still delusional and paranoid and his judgment is poor, continue care on the wards.
Dr. Gumanis/jwl

7-11-62: Patient states that other patients call him a homosexual and call his family bad names. Asked for a privilege card, request denied. Dr. Gumanis/jwl

[1004]

Donaldson, Kenneth., A-25738

PROGRESS NOTES (CON'TD)

10-22-62: No improvement, states his condition has not changed, continue care on the wards. Dr. Gumanis/jwl

11-9-62: Patient resides on ward #8, shows no perticular changes in his mental condtion. He now asks to be released to a cousin of his who lives in Syracuse, N.Y.Dr. Gumanis/ml

12-28-62: Physically. Dr. Chacon/jwl

4-17-63: Patient is the same, he complains about various matters concerning mangment and shows no insight towards his mental sickness. He still refuses to write or see his relatives. Recently he wrote a letter to the U.S. Attorney Mr. Ashmore about his case. Dr. Gumanis/jwl

6-13-63: No changes mentally, his judgment is still defective and he requires care.
Dr. Gumanis/jwl

9-4-63: Patient was denied a petition of Habeas Corpus and he shows no improvement mentally. Dr. Gumanis/glm

9-24-63: No changes mentally, patient is still delusional and paranoid, his judgment is still defective and he does not realize he is mentally ill. Dr. Gumanis/jwl

12-13-63: Resides on Ward 8, is not working and has not received any medication. Basically he still is delusional towards his parents and he shows no insight towards his mental sickness. States he has never been mentally ill. This patient was hospitalized for three months during 1946 at the Marcy State Hospital of New York. Believes he was committed to this Hospital "because someone wanted him out of circulation." This patient, if he is released, will require supervision. States if he is released he will live in Syracuse, New York and finish the book he is writing. He also expects to finish law correspondence in law and also take the Courts all the people involved in his commitment. Psychological examination ordered. Dr. Gumanis:mmc

12-27-63: A letter was received from the patient's parents. When this was mentioned he ignored the matter and stated, " I do not want to hear about it". He still feels his parents performed the wrong thing by hospitalizing him at the Florida State Hospital. Dr. Gumanis/mmc

1-17-64: Patient is demanding. He called writer a liar when asked why he requested to be placed in Occupational Therapy. Apparently he wishes the use of the typewriter department. He became infuriated when this was mentioned and walked out of the office. Request denied. Dr. Gumanis:mmc

3-5-64 States he wishes to send $100 to his daughter who lives in Arizona to come

and escort him to a Half-a-Way House in Minnesota. Mentally he shows no change. He is still lacking judgment and there is no insight towards his mental sickness. Dr. Gumanis:mmc (After consultation with Dr. O'Connor it is decided that the money would not be sent until arrangements for patient's release are made.). Dr. Gumanis:mmc

PROGRESS NOTES:

Donaldson, Kenneth, A-25738

4-2-64: Patient today for the first time accepted to be furloughed to his parents. Wrote a letter to Dr. O'Connor explaining matters. Dr. O'Connor was also of the opinion that the only solution was a furlough to his parents. Was promised that he will be interviewed again. Dr. Gumanis:mmc

7-7-64: Resides on Ward 8. Shows no particular changes mentally. He is still delusional and his judgment is poor. States he will live in Syracuse, New York and receive Social Security of $101. A Mr. John Lembcke, a public accountant, wishes to sponsor him in New York, however, Dr. O'Connor does not agree with this plan. Dr. Gumanis:mmc

7-20-64: No changes in his mental condition. He is still basically delusional and does not believe he is mentally ill. Dr. Gumanis:mmc

11-27-64: Resides on ward seven, shows no particular changes mentally. An accountant from Binghampton; New York asked for his release. Dr. O'Connor does not agree with this plan. States he corresponded with President Johnson in the past, he also wrote him last month. Request for release to New York denied. Dr. Gumanis: jp.

1-14-65: Resides on ward seven, shows no changes mentally. He is now corresponding

with his parents. This patient will be considered for Staff again. Dr. Gumanis:jp

5-17-65: Mentally unchanged. Dr. Chacon:jp

5-19-65: Patient shows no changes mentally. Resides on ward 7. He still expresses delusions and paranoid ideas against certain persons, his judgment is poor and he has no insight towards his mental sickness. He is suspicious of the motives of others and is negativistic. States he has not received any medication and he corresponds with his parents at times when they have questions about his status. States he will have a new attorney and physician to come to examine him. Plans to go to Syracuse, New York and obtain a civilian job. Further expects to publish his book about his hospital experiences, but will not hurt anyone. His daughter who lives in Tuscon, Arizona would gladly have him, but he prefers to live in Syracuse, New York. Physically the past year he is well and he enjoys the food. Believes he has never been mentally ill and the E.C.T. he has received at the Mercy Hospital in New York is a mistake. He further states that the doctors that examined him in Pinellas County did not examine him physically or mentally and he found out about this three years later. Dr. Gumanis:jp

8-30-65: Physically no complaints. He states he feels physically well mentally he maintains the idea that he is all right now and doesn't belong here. Continue custodial care. Dr. Chacon:glm

-2-65: Patient states he will not discuss his case with writer. He was mad and refused to be interviewed. This patient continues to show no changes mentally. Dr. Gumanis:jp

-65: Patient was seen in conference with Dr. Rich for about one hour. He shows no changes in mental condition and is still delusional and paranoid on certain things and reveals no insight into mental illness. When oral medication was offered he refused to take medication claiming he is not mentally ill.
Dr. Gumanis:jp

PROGRESS NOTES

Kenneth Donaldson, A-25738

2-21-66 Patient received a legal brief from the Southern District of the United States Court of Appeals from California for his own case. After consultation with Doctor O'Connor and Doctor Rogers it was decided that this brief will be given to the patient. Mentally he shows no changes and believes he is not mentally ill.
Dr. Gumanis:jp

3-29-66 Resides on ward seven, shows no changes mentally. Patient is trying to obtain records of his past mental sickness from a Philadelphia General Hospital. Patient is still hostile and believes he will be released through the Courts.
Dr. Gumanis:jp

5-12-66 A Mr. Lembcke from New York State was allowed to visit the patient today. Writer believes that he is trying to make arrangements for his release with the consent of his parents. Dr. Gumanis:jp

5-18-66 Patient was seen during an interview about 2 letters to Dr. in New York and Mr. Stallings. Patient was again paranoid against Dr. O'Connor and stated that the case will be handled by Court in Jacksonville. He accused Dr. O'Connor of being a Mason and head of the local Klu Klux Klan. He shows no judgment in his conversation. When told that Mr. Lembcke had traveled to his home to obtain the written permission of his parents he

told writer he will not go to Staff. He will receive an Out of state discharge if the written permission of the parents is obtained and the patient passes staff. Dr. Gumanis:jp

6-28-66: Patient reveals no particular changes mentally. He refuses medication and has no insight towards his mental sickness. A son who lives in Hollywood California has written us a letter recently about his father's case. Dr. Gumanis:glm

7-12-66 Patient refuses to see his daughter who lives in Arizona and has not seen her father for the past twelve years. Mentally Mr. Donaldson shows no particular changes. When he was advised that his daughter will visit him on July 25, 1966, he stated "that his case is in Mr. Stalling's hands and he will not see her.". Dr. Gumanis: jp

7-25-66 Patient's daughter from Tuzon Arizona visited him today and he refused to see any one claiming that he advised his daughter not to write the hospital about his condition. Patient's daughter was a sad about situation and she left the hospital without seeing her father. Dr. Gumanis:jp

1-20-67 Resides on ward seven reveals no changes mentally. Patient was advised that his mother died and the only comment was that he was sorry, but she was 90 years old. When asked if he wishes to leave by receiving help from the Vocational Rehabilitation Service he stated that Mr. Stalling will have tc be present and be with him at Staff. Dr. Gumanis:jp

2-1-67 Patient continues to be delusional and has ideas that people are prosecuting him. There is no judgment in this patient, He now states he would like to be released to his son who lives in California and he has correspondence with him. If this patient is released complete supervision will be required by some responsible person. Dr. Gumanis:jp. Psychological examination ordered.

A. 202(a)

Kenneth Donaldson, A-25738

-16-67 Patient again wishes to file a petition and wishes to have it notarized. He was advised that the Superintendent will have to decide. Mentally he reveals no changes. Dr. Gumanis:jp

A. 202(b)

TRANSFER, PROGRESS, AND MEDICATION

Re: Mr. Kenneth Donaldson, A-25738

April 18, 1967

This 60 year old w/m was transferred from Dept. A to Dept. C as an exchange patient. Patient has been here since 1/15/57, and was diagnosed as Schizophrenic Reaction, Paranoid Type.

He is partially oriented as to time. He i. over talkative, over productive, stated there was no legitimate reason to be locked up for the past 10 years. Some ideas of reference centered mostly toward his previous examiner.

According to the record he was before the General Staff Conference on 4/6/62, at which time it was the consensus of opinion that he remain in the Hospital. He was presented again to General Staff Conference on 1/9/64, at which time it was also the consensus of opinion of the Staff that he remain in the Hospital.

DX: Schizophrenic Reaction, Paranoid Type.

RX: Thorazine 50 mg. tab. TID
IF ORAL MEDICATION IS REFUSED, TO BE GIVEN: Thorazine 50 mg. IM Q4H PRN

Physical survey was done by Doctor Sanguinetti. Review of system within normal limits with exception of external hemorrhage. Blood pressure 140/80. IH/pam

April 27, 1967
The above named patient was seen again, at which time it was noted that there were some spots on both sides of the nose andof the infraorbital region bilaterally. The Thorazine was temporarily discontinued and to be checked in a few days again.
IH/pam

May 1, 1967
Patient checked again and apparently the spots as mentioned in the progress note above have disappeared and his medication will be changed to Mellaril 50 mg. tab. TID, and Decavitamin 1 BID. This patient continues to talk about having filed a writ of habeas corpus and we discussed this matter with the patient.

IH/pam

May 11, 1967
The above named patient was seen by this examiner in a lengthy interview, at which time it was noted that he appears to be much quieter than he has been in the past. Apparently the hostility he has shown in the past is gradually subsiding. There is a possibility for a new psychological testing and the representation before the General Staff will be considered. His medication was discontinued on May the 4th, 1967. He resides on ward 10, building 41, and presently taking part actively in Occupational Therapy.
IH/pam

June 6, 1967
The above named patient was seen by this examiner in a lengthy interview, at which

time patient again made some remarks that were equalivalent to ideas of reference centered toward a previous examiner. This patient asked this examiner that he wants to be presented before the General Staff to gain a competency discharge, but at the present time patient does not have any concrete plans for the future. He will be seen again in a week to discuss this matter. He resides on ward 8.
IH/pam

PROGRESS NOTE

Re: Mr. Kenneth Donaldson, A-25738

February 27, 1968
The above named patient has been seen periodically by this examiner. There is apparently some residuals of hostility toward this Institution and toward a previous examiner still present. He stated to this examiner since he has been here in Dept. C he has not complained whatsoever and that he has been treated like a human being in every respect. He stated that his case will be up before the Supreme Court and he still believes that he has been held here illegally. He is taking active part in Occupational Therapy and resides on ward 8.

His main goal at the present time is to obtain a release from the Hospital.
IH/pam

March 12, 1968
The above named patient has been seen periodically at least once a week since his transfer from the Dept. A to Dept. C. There were times during the interviews the patient exhibited a number of paranoid delusions and ideas of reference mostly centered toward a previous examiner and the Hospital administration. There were other times during the interviews this patient appeared to be under satisfactory control, elaborating in detail his hospitalization in Chattahoochee. Since he has been at the Dept. C he was continuously amenable to general discipline, was no management problem whatsoever, always respectful in every way. A new psychological testing will be administered with the

possibility to be presented before the General Staff Conference on Thursday, March 21st.
IH/pam

March 20, 1968
The above named patient was in this examiner's office for the purpose to clarify the special interview he had on Monday, March 18th, 1968, in the office of this examiner.

He was asked a question whether he realizes that the interview was recorded verbatim on the recording machine. He was also listening when this examiner read the question and answer of the interview.

The patient stated he was aware that the interview was recorded and as far as he is concerned he had no objection whatsoever. He said he was very pleased to give all the answers to the best of his knowledge and ability.
IH/pam

June 12, 1968
The above named patient was presented before the General Staff on 3/21/68, at which time the consensus of opinion was that he could be released on a Trial Visit or on an out-of-state discharge. He has been seen periodically by this examiner, and patient is apparently waiting to be released from the Hospital, if and when arrangements will be completed for his release (please see correspondence.).
IH/pam

A. 202(c)(ii)

August 2, 1968
This patient has been seen again in a lengthly interview by this examiner at which time no essential changes noted as compared with note above.
IH/lrh

A. 203(a)

A-25738 Mr. Kenneth Donaldson

April 30, 1969
The above named patient has been seen on numerous occasions in this examiner's office and also visiting in Building 41 where patient's reside. I watched this patient very carefully in every respect and it was noted that this patient has been helping a great deal with the patient's who are unable to write to their relatives. He was helping them in that respect. Furthermore, this patient was constantly occupying himself with reading material and in Occupational Therapy painting a great deal. We discussed a great deal his long period of hospitalization here and at the present time it was the opinion of this examiner that this patient is most definitely in remission of his past psychotic symptoms and has been so for some time.

This patient approached this examiner on numerous occasions to be permitted to see Doctor C. A. Rich, the Clincial Director for an interview with him. This permission was granted by this examiner and approximately over an hour this examiner saw Dr. Rich immediately afterwards at which time we went over the record and the Staff notes of March 21, 1968 and Dr. Rich stated that the patient if and when permitted to be released on an out of state discharged he would not have to live in the same city of the same house. As long as he is available to consult with Mr. Lembske. Dr. Rich further stated that no further authorization from the father who is over 90 years of age would be required.
IH/sd

A. 203

[1006]

SUMMARY SHEET

Mr. Kenneth Donaldson, A-25738

1-18-57 Received smallpox vaccine.

2-1-57 Completed 1st course typhoid vaccine

NAME Mr. Kenneth Donaldson A-25738
DATE 1-15-57
Claims all a mistake that he was brought here. Has been in Florida since Aug writing his autobiography and father arranged to have him arrested. Has sent his autobiography to Saturday Evening Post since arriving here. Writing in self defense against members of the Republican party who used many of his ideas on Foreign policy and labor relations. They have been slandering him and getting him moved off jobs for last 7 - 8 years.
Marcey State Hospital 1943. 10 E C T 3 months. Has seen several psychiatrists after near misses with the law. Lived most of his life in Pennsylvania, but moved about a lot. Divorced 8 years ago after 13 years married life - 3 children now with mother in Arizona. Has high school education.
Paranoid delusions, hallucinations as above regarding Republicans - pretty stiff and found to influence his sex organs.
History withdrawal - very poor job adjustment. Appears to have had breakdown in late adolenscence and made marginal adjustment ever since.
DIAGNOSIS: Paranoid schizophrenia of about 35 years standing. CHA

A. 203(i)

1-29-57 Letter requesting permission ECT CHA
3-23-57 Long standing paranoid schizophranic. Had 20 ECT's about 10 years ago. Has continued paranoid - gets excited - paranoid delusions fixed. Permission for ECT has been received, but patient steadfastly refuses shock. I do not feel it will help him, except if necessary to quiet acute episode. Has recently presented writ of Habeas Corpus. Sits quietly in ward and refuses to socialize - refuses to work.
Continually claims he is quite sane. Feel he could do some work on the wards. Physical condition good. CHA:G

10-14-65 Received 1 c.c. flu vaccine/la

[1007]

PROGRESS NOTE

Re: Mr. Kenneth Donaldson, A-25738

August 8, 1967
The above named patient was seen in a lengthy interview at which time he stated that he has some plans to be released from the Hospital. A new psychological testing was done on 7/13/67. It is contemplated that he be brought before the General Staff on October 12, 1967. He is presently on Decavitamin 1 BID.
IH/pam

July 17, 1969
The above named patient who has been here in Department C has never shown any poor behavior. He was always amenable to general discipline, minds his own business and was also polite to the examiner, to the ward personnel and on numerous occasions helping elderly patients and any other patients especially who are unable to write and helping to write letters to their relatives. This patient has been under satisfactory control mentally and on numerous occasions when seen by this examiner in personal interviews he was elaborating in detail, detailing his hospitalization since admission here of January 15, 1957. He was never a management problem and very respectful in every way. He has been in Occupational Therapy and is taking this work very seriously. This examiner is trying a possibility for a release in the near future. The fact is that he was presented to Staff on March 21,

1968 but was recommended a Trial Visit however, no one was available to sign the papers in Florida and this patient was not interested to remain in Florida. The Staff agreed then on an out of state discharge if satisfactory arrangements could be made.
IH/sd

September 9, 1969
The above named patient has been seen periodically in personal interviews at least once a week patient has always been amendable to general discipline. He is taking part a great deal in Occupational Therapy, he paints a great deal, reads, and helps with patients who are unable to write, he helps them with correspondence. It was decided that this patient should be given outside privileges and he will reside on ward #7.
IH/vgg

October 20, 1970
Today in Pensacola paper appeared a statement about Kenneth Donaldson, who said he is not getting any treatment in this institution. The patient in the last years on several occasions has been offered Group Therapy and treatment and he always refused. He said his lawyer told him don't take any medication or go to Group Therapy. Numerous psychological test and psychiatric interviews have been given, however, his behavior is good. He only tries to create problems in the hospital by writing the newspapers. He observes the rules of the hospital. We don't give any medication. On different occasions he has been offered to go to staff, however, he gets upset and refuses to go. Today Dr. Machado, and the supervisor, Mr. Carmichael were present

in the interview, and again we offered Group Therapy and talking about his medication and he still said the lawyer advised him not to take any, however he was friendly. cooperative. He showed some paranoid ideation about the hospital policy mainly about the superintendents office. We made this progress note to show what we are trying to do with this patient.
J. S. Rodriguez, M. D./vgg

[1008]

PROGRESS NOTES
(cont.)

Re: Mr. Kenneth Donaldson A-25738

February 24, 1971:
This patient was interviewed today again because of Doctor Walls' suggestion and the fact that his attorney, Doctor Birnbaum, might come to visit this weekend, in connection with a reporter. However, he was advised that the only person who could give permission for the reporter to see him would be Doctor Rogers, the Director of the Division of Mental Health. This patient asked if we had made previous progress notes. He was presented to Staff the last time in 1968, and release on Trial Visit or out of state discharge was recommended. However, even a layman will find that this patient is a schizophrenic, paranoid type, and he enjoys just creating problems for the Hospital. This patient has been offered group therapy, chemotherapy, and other forms of therapy, and on numerous occasions proposed to be reviewed by the Staff, but always he says he needs to consult with his attorney, Doctor Birnbaum. Since I have been in charge of this patient, I have never talked with Doctor Birnbaum regarding his case. At the present time the only therapy is millieutherapy to supervise his eating and sleeping and give him adequate care. This patient, if any of his family or even his attorney, Doctor Birnbaum, wants to take him and give him adequate supervision, he could

be released. However, this Doctor does not have this kind of intention. This patient writes numerous letters everyday to different papers, magazines, and even has a typewriter to write these letters. His physical condition is perfectly good and I usually talk with this patient in the hall everyday. He has never been a violent patient, he never has any physical problems; just writing letters to various papers and complaining about this Institution. I talked with Doctor Walls and I will be willing to take any suggestions for future treatment of this patient.
J. S. Rodriguez, M. D./cb

March 4, 1971:
Doctor Walls talked with this patient and he accepted to take the psychological tests.
J. S. Rodriguez, M. D./cb

March 10, 1971:
At the present time this patient has outside privileges however, he just writes letters to lawyers in California, in New York, and trys to write different papers. His behavior is good. He is more or less friendly, however, shows a great deal of hostility to the hospital and our previous Superintendent, Doctor O'Connor. Also, this patient has appealed to the Supreme Court on previous occasions, and one time in the Supreme Court said the patient should be kept in hospital. In the last interview with Doctor Walls and the patient, he said he will take the chance to have a psychological test and to go to Staff again. This patient will be held at this time until we clear with Doctor Rogers and

Doctor Walls about his appearance in Federal Court.
J. S. Rodriguez, M. D./vgg

April 19, 1971:
Patient said he sued the hospital, Doctor Walls, Doctor O'Connor and Doctor Rogers and he has a hearing about the 18th or 22nd of this month it is not clear because the lawyer who handles his case is from New York. At the present time, patient is friendly, cooperative, however, he still shows paranoid delusions. Has been offered on numerous occasions to be presented to staff. Has also been offered Group Therapy, but all was refused and he said his lawyer prohibits him from entering any group therapy or do any psychological test. This patient is negativistic to any kind of treatment He is paranoid and delusional at the present time, however, his behavior is very good. He has outside privileges. He does not cause any

[1009]

PROGRESS NOTES
(cont.)

Re: Mr. Kenneth Donaldson A 25 738

behavior problems on the wards or on the hospital grounds. At the present time his pursue is to annoy the officials the hospital and creat problems to the hospital, because he says he has been here for no reason at all. He will wait for the decision of the court in Tallahassee after the lawyers talk at his hearing. Mr. Bevis was present in the interview and could be as a witness that he continued to refuse any kind of treatment.
J. S. Rodriguez, M. D./vcg

June 21, 1971
This patient was examined today and discussed with him about the letter he wrote to his lawyer because he says that a group of patients were agitating him. It was also discussed with the superintendent, Dr. Walls, about this patient. The patient said one of the employees in O.T. was annoying him a lot and for that reason, he quit going to O.T. Also he said that for the last three years that some patients in Building 41 tried to have homosexual relations with him. We offered to transfer him to another ward; however, he said he wanted to remain in Building 41. In the opinion of the examiner at this time, this patient has a flareup like today. We offered medication and he said

he needed to consult with his lawyer about that like he had always done. However, then later on he said he is not getting any treatment in this hospital contrary to what we offered at the present time. Dr. Walls was notified of this interview with the patient.
J. S. Rodriguez, M. D./jw

A. 206(a)

FLORIDA STATE HOSPITAL

CHATTACHOOCHEE, FLORIDA

Ward 7

1 August 1958

Social Service Office
Florida State Hospital

Gentlemen:

I have been locked up since 10 December 1956 as being of the "paranoid type and possibly dangerous to the people of the state of Florida." I have been held without psychiatric examination: and without or receiving treatment of any kind. I am not Ill in any way and have I herewith at anytime during any stay here. The hospital refuses to consider me for discharge.

As I am a native of and a declared citizen of Pennsylvania I would like to have you make arrangements for me to be transferred back to Pennsylvania.

Thank you.

Very truly yours,
Kenneth Donaldson

A. 206(b)

DATE 8-1-58

TO: Dr. J.B.O'Connor

FROM: V.S.Williamson

MEMORANDUM
Florida State Hospital
Dept: Medical WM
Dept. Social Service

Re: Kenneth Donaldson A-25738

Do you want to refer this patient to Social Service? I note that his file is full of letters to many people and this one is probably just another experession of his illness. I see no indication of his residence being Pennsylvania.
/s/ V.S. Williamson

8-4-58
Evidently he sent this to you by another patient. He writes everyone, especially all prominent people, about his "unlawfull incarceration." I don't believe any other state will accept him.

Thanks,
J. B. O'Connor

October 8, 1962

Re: Mrs. Olive Kennedy

TO WHOM IT MAY CONCERN:

Mrs. Olive Kennedy has asked me to make a statement regarding her capabilities as head of Helping Hands, Inc., and their services.

I met Mrs. Kennedy through Dr. Arthur Foote, the minister of Unity Church in St. Paul in April, 1958. I had numerous conversations with her about her interest and work in Helping Hands Association, together with more general discussions about the problems of the patients before and after their discharge from mental hospitals.

I saw Mrs. Kennedy at the headquarters of the Association at her residence, 3748 Park Avenue, Minneapolis. Several times during these discussions, ex-patients came to enlist her aid. On one occasion, I was able to be of assistance to her in getting one of the ex-patients admitted to General Hospital in Minneapolis. Thus, I was able to observe Mrs. Kennedy in her work as President of Helping Hands Association.

At all times, I was impressed with her warmth and understanding of the problems of the patients. She is a "good listener" (rarer than it sounds until one thinks of it), and first establishes and then responds intelligently to their needs in a selfless manner.

I would say that it would be impossible in any of our State Hospitals for a patient to receive the type of attention and care that she offers through Helping Hands. She carries the responsibility personally for any patient she has volunteered to take into her care.

/s/

Sherman E. Nelson, Ph.D., Clinical Psychologist
Minneapolis Clinic of Psychiatry and Neurology

SEN/em

A. 207

[1045a]

June 6, 1963

Dr. W. D. Rogers
Superintendent
Florida State Hospital
Chattahoochee, Florida

Dear Dr. Rogers: In re: Kenneth Donaldson

We are interested in the possibility of signing out your patient, Kenneth Donaldson, and taking him in as a resident at our halfway house at 3800 Columbus Avenue, Minneapolis. A maximum of six people live here, including our house mother, and myself, as president. At this time we have a room for Kenneth, who has interested us very much through his letters.

Enclosed is a copy of an October, 1962 letter from one of our Advisors, giving you an idea of our work. Mrs. Kennedy has rehabilitated well over a thousand over the years.

The usual rate per month for food, home, telephone, laundry and counseling is $85 per month, or $19.50 per week. This rate varies. We have carried a disabled vereran at $125 per month; we have had some without any pay because they had nothing. At this time, however, there would have to be payments to cover costs.

We would appreciate an early reply from you as to the age of this patient, your

opinion of his health, his qualifications for work -- special training, education, etc. We have to make a decision at the earliest possible moment.

Kindly answer via air mail.

Cooperatively yours,

/s/

Henry Cantwell
President

June 17, 1963

Re: Mr. Kenneth Donaldson A-25738

Mr. Henry Cantwell
President, Helping Hands, Inc.
3800 Columbus Avenue
Minneapolis 7, Minnesota

Dear Mr. Cantwell:

This acknowledges the receipt of your recent letter in regards to the above named patient, and we wish to advise that Mr. Kenneth Donaldson was committed to the Florida State Hospital from Pinellas County, Florida, on January 3, 1957, and was admitted to this Hospital on January 15, 1957. He has been here continuously since the above mentioned date.

The patient is a 55 years old, white male, and his parents live in Largo, Florida. They are the ones who are legally responsible for him, since the patient is considered incompetent mentally at the present time.

Should he be released from this Hospital, he will require very strict supervision, which he would not tolerate. Such a release would be to the parents. We see no prospects of his release to any third party at any time in the near future.

Yours very truly,

J. B. O'Connor, M. D.
Clinical Director

JG/rr/cb
JBO'c/rr/cb

[1047]

25 A St —
Belleair Village
Largo - Florida
18th June '63

Dr O'Connor -

Not feeling too well, so it has hindered my writing about Kenneth. We hear from Kenneth occasionally but I cannot read manual - but it is good to hear from him -

Would like a few lines from you as to his condition, physically & mental.

Mr Donaldson is ageing & not very active for his age 55 - His mind dwells on Kenneth as normal fathers do - he love and care & and hearts are heavy -

a few lines from you will be appreciated -
Please excuse this writing -
Respectfully
Mrs Wm Donaldson

June 25, 1963

Re: Mr. Kenneth Donaldson A-25738

Mrs. William Donaldson
Belleair Village
Largo, Florida

Dear Mrs. Donaldson:

This is in answer to your recent letter, and we wish to advise that Mr. Donaldson has shown no changes mentally.

His judgment is still defective, and he does not realize he is mentally ill. Otherwise, physically he is well, and he is up and about daily.

Yours very truly,

J. B. O'Connor, M. D.
Clinical Director

JO/eb

MALLORY E. HORNE
Speaker

BC .Y RUSS
Speaker Pro Tempore

LAMAR BLE JE
Chief Clerk

W. A. BALLENTINE
Sergeant at Arms

FLORIDA HOUSE OF REPRESENTATIVES

TALLAHASSEE

GEORGE B. STALLINGS, JR.
REPRESENTATIVE, DUVAL COUNTY
409 LAW EXCHANGE BUILDING
JACKSONVILLE 2, FLORIDA

December 9, 1963

COMMITTEES:
ELECTIONS, CHAIRMAN
JUDICIARY C
APPROPRIATIONS
CONSTITUTIONAL AMENDMENTS
WORKMEN'S COMPENSATION
LEGISLATIVE APPORTIONMENT

Florida State Hospital
Office of the Superintendent
Chattahoochee, Florida

Re: Kenneth Donaldson

Dear Sir:

I would like to make a trip over to the Florida State Hospital on Monday, the 23rd of December for the purpose of interviewing Kenneth Donaldson and also to meet with you and Doctor Rogers if this is possible.

Please advise me at your earliest opportunity if I might come over and meet with you gentlemen at about 9:00 o'clock in the morning of December 23rd.

When I was in Gainesville, I discussed the possibility of such a meeting with Doctor Rogers and he encouraged me to come over at my convenience and talk with some of these people.

Thanking you for an early reply, I remain

Sincerely yours,

Geo. B. Stallings, Jr.

George B. Stallings, Jr.

GBS,jr/sh

SUPERINTENDENT'S OFFICE
FLORIDA STATE HOSPITAL
RECEIVED
DEC 2 1963

MALLORY E. HORNE
Speaker

BY RUSS
Speaker Pro Tempore

LAMAR BI OE
Chief Cl..

W. A. BALLENTINE
Sergeant at Arms

FLORIDA HOUSE OF REPRESENTATIVES

TALLAHASSEE

GEORGE B. STALLINGS, JR.
REPRESENTATIVE, DUVAL COUNTY
409 LAW EXCHANGE BUILDING
JACKSONVILLE 2, FLORIDA

February 17, 1964

COMMITTEES:
ELECTIONS, CHAIRMAN
JUDICIARY C
APPROPRIATIONS
CONSTITUTIONAL AMENDMENTS
WORKMEN'S COMPENSATION
LEGISLATIVE APPORTIONMENT

Doctor J. B. O'Connor, Superintendent
Florida State Hospital
Chattahoochee, Florida

Re: Kenneth Donaldson, A-25738

Dear Doctor O'Connor:

This will confirm the appointment in your office at 9:00 o'clock, Saturday Morning, February 22, 1964, at which time I will be accompanied by Doctor Frank Calhoun. We will try to be there a few minutes ahead of time.

Thanking you for making the necessary arrangements, I remain

Sincerely yours,

Geo. B. Stallings, Jr.

George B. Stallings, Jr.

GBS,jr/sh

SUPERINTENDENT'S OFFICE
FLORIDA STATE HOSPITAL
RECEIVED
FEB 18 1964
AM PM

A. 214

[1055]

January 9, 1964

Re: Mr. Kenneth Donaldson, A-25738

Honorable George B. Stallings, Jr.
Representative, Duval County
409 Law Exchange Building
Jacksonville 2, Florida

Dear Mr. Stallings:

In keeping with your request that the current psychological evaluation of our patient, Mr. Kenneth Donaldson, be done by a particular psychologist, namely Mr. Sam Cunningham, since Mr. Donaldson refused to be examined by the Chief Psychologist of this Hospital, you are advised that the examination in question was done by Mr. Cunningham, subsequent to your recent visit here.

The results of this examination are reported to show that Mr. Donaldson continues to display a paranoid type of thinking disorder and continues to express beliefs that have been present for many years. One chief such belief is that some political groups, apparently high in office and influence, and apparently outside of the State of Florida, have for years resented his efforts to advise other individuals high in government, and have, therefore, plotted to prevent his contributing ideas to the government. These ideas are identical with those Mr. Donaldson expressed at the time of his admission to this Hospital.

The results of Mr. Cunningham's recent examination have also been reviewed by the Psychology Department. His findings have been concurred in, and the conclusion reached by that department was that the patient still displays the symptoms of a serious mental disorder, that this condition was present at the time of his admission to this Hospital, and that it has shown no significant change at the time of this most recent psychological examination.

You are also advised that Mr. Donaldson was presented at the General Staff Conference of this Hospital today, January 9, 1964. At that

A. 215

[1056]

time, his entire history, and also the current psychological and psychiatric evaluations, were reviewed, and Mr. Donaldson himself was interviewed at great length by the members of the Staff.

It was the unanimous opinion of the members of the Staff that Mr. Donaldson is still suffering from a very serious and chronic type of mental disorder, which is manifested chiefly by extremely poor insight and judgment, by marked hostility to all who, he believes, oppose him in any manner, and by fixed beliefs that he has been persecuted for many years by certain organizations, especially those of a political nature, and that these have brought pressure and influence to bear on nearly all others he has contacted, including the courts, the law enforcement authorities, and also the staff of this State Hospital, and caused these agencies to persecute Mr. Donaldson and to conspire together to deprive him of his liberties.

It was also the unanimous opinion of the Staff of this Hospital that this patient is mentally ill to the degree that he is mentally incompetent, and that he is incapable of attending to his affairs outside of an institution without constant interference with others by his demands and allegations against them, and even may present some degree of danger to others.

In conclusion, it was the unanimous opinion of the Staff that because of these findings the patient could not be recommended for release from this Hospital at this time, but the Staff, of course, would be quite willing to agree to his transfer to some other state hospital, provided such state would acknowledge him as a resident of that state.

If further information is desired in this case, please so advise, and such will be furnished at once upon receipt of your request.

Sincerely yours,

J. H. O'Connor, M. D.
Superintendent

JHO'C:da

527

BEST COPY AVAILABLE

A. 216

[1057]

N. Germano — Stated
This man himself
not to be well to want to
let involved with parents
like this patient who we
the Neuropsychiatrist
considered "dangerous"
Recommend Lanier
From Florida 538 7-6-64

Det Lecard
Supts Office

A. 216(a)

FLORIDA STATE HOSPITAL

Retd 4-2-64

N. Germano — Letter re "plaintiff" to plaintiff's dau re "plaintiff" dau re plaintiff's alleged threats to kill Governor Kennedy & Negroes in Florida & Negroes in general. Dau requested that plaintiff be committed to Florida State Hospital. Plaintiff is presently confined in Florida State Hospital pursuant to Court Order. Plaintiff could not be released from Florida State Hospital without Court Order. In my opinion 4-2-64 & Lanier

BEST COPY AVAILABLE

JOHN H. LEMBCKE
CERTIFIED PUBLIC ACCOUNTANT
338 PRESS BUILDING
BINGHAMTON, N. Y. 13901

July 3, 1964

J. B. O'Connor, M. D.
Superintendent, Florida State Hospital
Chattahoochee, Florida 32324

Dear Doctor O'Connor:

Kenneth Donaldson, a friend of mine, is in your hospital.

If I were to come down to your hospital; are there any conditions under which he would be released so that I could bring him back to New York State?

Any information as to what is required and how it would have to be arranged will be greatly appreciated.

Sincerely yours,

John H. Lembcke

John H. Lembcke

RECEIVED
CLINICAL DIRECTOR
FLORIDA STATE HOSPITAL

SUPERINTENDENT'S OFFICE
FLORIDA STATE HOSPITAL
RECEIVED
JUL 6 1964
AM 7,8,9,10,11,12,1,2,3,4 PM

[1959]

July 7, 1964

Re: Mr. Kenneth Donaldson A-25738

Mr. John H. Lembcke
Certified Public Accountant
338 Press Building
Binghamton, New York 13901

Dear Mr. Lembcke:

This acknowledges the receipt of your letter of July 3, 1964, concerning the above named patient, and we wish to advise that Mr. Donaldson has shown no particular changes mentally.

He has been hospitalized continuously since 1957 at the Florida State Hospital, and he was presented before the General Staff of this Hospital on two occasions, and it was the opinion of the Staff that he requires further hospitalization.

If Mr. Donaldson is released, he will require complete supervision because of his poor judgment. We do not recommend his discharge to New York. His parents are living in Largo, Florida, and they are considered his guardians.

It is hoped the above information will prove of help to you in your present interest in this case.

Yours very truly,

C. A. Rich, M. D.
Clinical Director

JO/cb

541

[1060]

JOHN H. LEMBCKE
CERTIFIED PUBLIC ACCOUNTANT
888 PRESS BUILDING
BINGHAMTON, N. Y. 13901

November 23, 1964

James B. O'Connor, M. D., Superintendent
Florida State Hospital
Chattahoochee, Florida 32324

Dear Dr. O'Connor:

Is it possible that Florida State Hospital would approve releasing Kenneth Donaldson under my supervision?

We are not related but are friends since 1927.

His parents know me.

I am deeply interested in the welfare of Kenneth Donaldson.

If there is further information needed before reaching a decision; I will gladly submit any information which is available.

Sincerely yours,

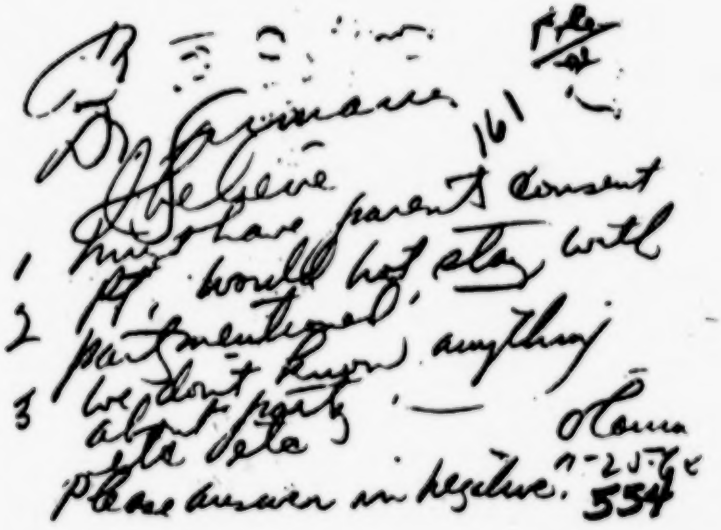
John H. Lembcke

John H. Lembcke

RECEIVED
CLINICAL DIRECTOR
FLORIDA STATE HOSPITAL
NOV 25 1964
A.M. 7-8-9-10-11-12-1-2-3-4-5-6 P.M.

RECEIVED
NOV 25 1964
A.M. 7-8-9-10-11-12-1-2-3-4-5-6 P.M.

[1061]



RECEIVED
CLINICAL DIRECTOR
FLORIDA STATE HOSPITAL
NOV 25 1964
A.M. 7-8-9-10-11-12-1-2-3-4-5-6 P.M.

BEST COPY AVAILABLE

A. 221

[1062]

November 27, 1964

Re: Mr. Kenneth Donaldson, A-25737

Mr. John H. Lambcke
Certified Public Accountant
338 Press Building
Binghamton, New York 13901

Dear Mr. Lambcke:

This acknowledges receipt of your letter of November 23, 1964, and we wish to advise that Mr. Donaldson has shown no improvement in his mental condition. Physically he is well, and he is up and about daily.

Mr. Donaldson was presented before the General Staff of this Hospital twice, during 1963 and during 1964, and it was the consensus of opinion of the staff members that he is not ready to leave the Hospital.

We are sorry to advise you again that Mr. Donaldson will require further hospitalization.

Yours very truly,

C. A. Rich, M. D.
Clinical Director

JG/mbg

BEST COPY AVAILABLE

55

A. 222

[1063]

PSYCHOLOGY DEPARTMENT
FLORIDA STATE HOSPITAL
CHATTAHOOCHEE, FLORIDA

August 9, 1965

Gregory and Towles
Attorneys-at-Law
Quincy, Florida 32351

Re: Donaldson, Kenneth
Age - 53

Dear Sirs:

Your letter inquiring about my psychological examination of the above mentioned man has been received.

Since I discussed my test results in a meeting with the hospital staff and Mr. George Stallings, I have no written report to send you. I can assure you, however, that the results of my examination were in complete accord with the diagnostic evaluation of the hospital staff. This man has the type of mental illness that is the most difficult for lay persons to detect. Even a psychologist or psychiatrist could be "fooled" by Mr. Donaldson unless certain types of psychological tests are included in the evaluation. Unless his condition has greatly improved since my examination, I still feel very strongly that Mr. Donaldson is ill, dangerous to society, and should remain hospitalized.

Sincerely yours,

F. J. Calhoun, Ph.D.

FJC:sc

[1064]

June 12, 1968

Re: Mr. Kenneth Donaldson, A-25738

Colonel H. R. Donaldson, Ret.
490 M Street, Southwest
Apartment 600
Washington, D. C. 20024

Dear Colonel Donaldson:

Your letter addressed to Florida State Hospital was forwarded to this Office for reply.

Your brother was presented before the General Staff on March 21, 1968, at which time it was recommended that he be released on Trial Visit or on an Out-of-State Discharge. The fact is, that your brother has a close frined, a Mr. John Lembcke, of Binghamton, New York, who would be willing to give him adequate supervision and if necessary to be checked periodically with a psychiatrist, if such should become necessary. Furthermore, it was the opinion of the Staff that Mr. Lembcke would be required to furnish a written authorization from his father, stating that he has no objection for him to come to the Hospital and take your brother to New York. At the present time we only have the statement from Mr. Lembcke that a room will be furnished your brother, and he would also be readily accessible to medical doctors to make use of their services. The only thing that was missing at the present time is a written authorization from your father that he has no objection

that Kenneth goes to New York with Mr. Lembcke. Your brother, Kenneth Donaldson, was presented before General Staff at the recommendation of his attending psychiatrist, which was accepted by the entire staff. It is also the impression of his attending psychiatrist that your brother is not capable of harming anyone.

We hope this answers all your questions. If you have any more, please do not hesitate to write and we will be glad to answer them.

Yours very truly,

C. A. Rich, M.D.
Clinical Director

IH/pam

[1065]

June 17, 1968

INTER-OFFICE COMMUNICATION TO:

J. B. O'Connor, M. D., Superintendent

FROM:

I. Hanenson, M. D., Department C

RE:

Mr. Kenneth Donaldson, A-25738

The above named patient has been under my supervision for over a year, and presently residing in Building 41, taking active part in Occupational Therapy.

He is well behaved in every respect, gives no trouble whatsoever, cooperates well, and has not written any letter with exception of the one he wrote to Doctor Rogers.

This case was thoroughly reviewed, and patient was presented before the General Staff on March 21, 1968, at which time the consensus of opinion was that he could be recommended to be released on a Trial Visit or on an out-of-state discharge. There is no way for him to be released on a Trial Visit in Florida because his father, who is over ninety years of age, would not be able to give him adequate supervision. However, an out-of-state discharge would be more feasible. This

patient has a friend, Mr. John H. Lembcke, who is a Certified Public Accountant, in Binghamton, New York, who would be willing to come for the patient and who would provide board, maintenance, etc., and if necessary psychiatric treatment for this patient while under Mr. Lembcke's supervision. Another requirement would be as mentioned by the undersigned and agreed upon by the Staff, that it will be required a written permission from patient's father, that he has no objection whatsoever for the release of his sone to Mr. John H. Lembcke, of Binghamton, New York.

IH/pam

[1066]

Department C
Florida State Hospital
Chattahoochee, Fla. 32324
4 June, 1968

William D. Rogers, Head
Florida Department of Mental Health
Chattahoochee

Dear Doctor Rogers:

It would seem likely that you remember me.

My lot has improved tremendously in the last year in Department C under Doctor Hanenson; and I am ready to be released out of state to my friend Mr. John H. Lembcke, of Binghamton, New York, except for one thing.

My freedom hinges on a technicality, namely, getting my guardian's authorization for my release to my friend. I am asking you, if you would please, to bypass this hospital ruling.

My father, William T. Donaldson, age 90, is my assumed guardian under Florida Statute. He has all along expressed his approval of my going to Mr. Lembcke's, but he is under premise to his lawyer not to sign any more papers. I have been unable to learn the name of his lawyer.

[1067]

I believe these further facts are also worthy of consideration in the matter: the guardianship now would not likely stand up in a courtof law; I have not made my permanent home with my father for 30-some years; I never intended to make my home in Florida; I have no other family members in Florida; and I have many friends up north anxious to help me at this time.

I would appreciate it, Doctor Rogers, if you would make it possible for me to be released at this time.

Sincerely yours,

Kenneth Donaldson

A. 227

[1068]

September 18, 1968

Dr. C. A. Rich, Clinical Director
Florida State Hospital
Chattahoochee, Florida 3234

Dear Dr. Rich:

I called Dr. Hanenson, the attending psychiatrist of my good friend, Kenneth Donaldson, on September 17, 1968 at 7:40 p.m. at which time I mentioned that I have written permission by his parents addressed to Dr. O'Connor, Superintendent, Florida State Hospital, Chattahoochee as follows: "We, Mr. and Mrs. William T. Donaldson, give our permission that our son, Kenneth Donaldson, be turned over to the care and supervision of John H. Lembcke."

Dr. Hanenson suggested that I write you, Dr. Rich, and enclose a photo copy of their notarized written permission.

You will note that the notarized written permission was signed and notarized May 14, 1966, which is soon after I visited Kenneth. It was a Saturday, and by the time I was driving north from them at Largo, Florida I realized that there apparently was little, if any, chance of my seeing anyone at your hospital until Monday at which time I had an appointment in Atlanta, Georgia, from which I could have been released but had not been released since I had no assurance of any action which would warrant my foregoing the appointment.

A. 227(a)

Since returning to Binghamton in May, 1966 my work has kept me busy and, further, I was made aware that Kenneth was exploring other ways to attain his release.

I also have made inquiries regarding such a matter since responsibility has never been taken lightly by me.

Since other means of securing Kenneth's release have not resulted in his release; and since it will be possible for me to follow through in seeing to it that Kenneth is taken care of and supervised; I am at this time submitting a photo copy of his parents' notarized written permission with a request that you kindly take whatever steps you feel necessary preliminary to releasing Kenneth to me.

When you have taken those steps, kindly notify me as to on or after what date you are willing to release Kenneth to me. I will do anything within my power to come for Kenneth on your stated date.

I will be watching my mail to hear from you.

Sincerely,

/s/

John H. Lembcke

Belleair Village Motel
Trailer Court A
Largo, Florida
May 14, 1966

Dr. O'Connor, Superintendent
Florida State Hospital
Chattahoochee, Florida

Dear Dr. O'Connor:

We, Mr. and Mrs. William T. Donaldson, give our permission that our son, Kenneth Donaldson, be turned over to the care and supervision of John H. Lembcke.

Sincerely yours,

William T. Donaldson
William T. Donaldson

Marjorie K. Donaldson
Marjorie K. Donaldson

Notarized:

State of Florida
County of Pinellas

Before me personally appeared William T. Donaldson and Marjorie K. Donaldson, his wife, to me well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this fourteenth day of May, A.D. 1966.

CLINICAL DIRECTOR
FLORIDA STATE HOSPITAL
SEP 20 1968
A.M. 7-8-9-10-11-12-1-2-3-4-5-6 P.M.

Notary Public
State of Florida at Large

Notary Public, State of Florida at Large
My Commission Expires Aug. 29, 1969
Bonded by American Surety Co. of N. Y.

771

September 24, 1968

Re: Mr. Kenneth Donaldson A-25738

Mr. John H. Lembcke
Certified Public Accountant
338 Press Building
Binghamton, New York 13901

Dear Mr. Lembcke:

This is to acknowledge the receipt of your letter of September 18, 1968.

I am sure that you are aware that Kenneth Donaldson has been mentally ill for many years, and still expresses delusional thinking. It would not be fair to you or to him to release him from the Hospital at this time without adequate planning. From your letter, it is my understanding that you have not seen him since 1966. I do not recommend you taking him out of the Hospital until you become more acquainted with his case at the present time.

If you would like, you may visit the Hospital and discuss his case with me or with Doctor Hanenson, so that we can understand more fully exactly what your plans for him will be.

It will also be necessary for us to have authorization from his nearest relatives written more recently than 1966.

Yours very truly,

C. A. Rich, M. D.
Clinical Director

CAR/cb

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[990]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-25738
Date Examined: 9-19-58
Referred by: Dr. Guimanis
Age: 50
Educ: 1 1/2 years Syracuse Univ.

SUMMARY AND CONCLUSIONS:

Psychological evaluation reveals that this man's thinking is essentially paranoid. He has many rather poorly systematized delusions. He believes that people are continually talking about him not only telling things that are not true but telling obscene stories about him. The Rorschach record includes associations which point up some homosexual tendencies which is in agreement with the MMPI in showing a strong feminine orientation. Also it is noted that the paranoia and the psychopathic deviant are significantly beyong the normal range on the MMPI profile. The test record suggests that this patient is actively psychotic suffering from a paranoid psychosis which is probably schizophrenic in nature.

TESTS:

Rorschach

-A-Person

ATTITUDE AND PSYCHOLOGICAL CHARACTERISTICS:

On entering the examination room the patient stated in forthright manner that he did not appreciate the treatment he had received since being here. He does not believe that it was necessary for him to come here and he believes that since he has been here he has been discriminated against because he wrote a letter to the Supreme Court and because he is a Yankee. Mr. Donaldson maintains that certain persons he did not identify in Pennsylvania tried to blackmail him over the fact that he had had a previous mental hospitalization. He says that he wrote a book about this blackmail and sent it to the Saturday Evening Post. Several days later he was picked up by the authorities without explanation and briefly interviewed by some physicians who walked through the jail. He is very insistant that he be released from the hospital.

JCD:sb

[991]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-25738
Date Examined: 7-28-60
Referred By: Dr. Gumanis
Age: 52
Educ: 1 1/2 years Syracuse Univ.

SUMMARY AND CONCLUSIONS:

This patient was originally tested on 9-18-58, at which time it was felt that his thinking was paranoid.

The present testing shows no significant change from the earlier findings. While many of his responses tend to be of good form quality, some of the content is bizarre and reflects a deteriorated logic.

Delusional content continues to be in evidence, essentially as described at the time of the previous tests with the exception that in 1958 certain unidentified persons in Pennsylvania were responsible for the nasty stories being told on him. Now he alleges that a certain senator from Arizona is responsible.

TESTS:

Rorschach

ATTITUDE AND PSYCHOLOGICAL CHARACTERISTICS:

Mr. Donaldson stated that the person who did the previous psychological examination on him was either incompetent or dishonest. He based the statement on being told that the report stated he experienced hallucinations. Actually, the only reference to hallucinations was on his committment papers. Mr. Donaldson again told about the book he has written, the deplorable treatment he has received, and the way people have talked about him everywhere he has been.

JCD/fd

[992]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-25738
Date Examined: 6-1-61
Referred By: Dr. Guimanis
Age: 53
Educ: 1 1/2 yrs. college

SUMMARY AND CONCLUSIONS:

This patient has been tested on two previous occasions. He was first seen on 9-18-58, at which time it was felt that his thinking was paranoid. He was next seen on 7-28-60, and the testing at that time showed "no significant change from the earlier testing."

Present test data fail to show any undue disturbances of association or visual-motor incoordination. His drawings of persons are sketchy and noncontributory. His Rorschach responses are generally of acceptable form quality but some of their content tends to be bizarre. The overall impression gleaned from this test is that he is an emotionally volatile and overly suspicious type individual who is currently rather depressed. It is possible that he would show more deviant test results were he not so guarded and so familiar with the tests.

The impression one receives regarding the subject's mental status is more definite when clinical observation alone is used

to evaluate him. He tells a long and rather involved account of how certain unidentified persons have supposedly harrassed him for years. These persons have, according to him, continued this up to the present and he has written a book concerning this. He has also taken notes regarding observations made during his hospitalization, and has written these in some type of "code" unfamiliar to this examiner and evidently none too well known by the patient himself. He was asked to read some of this "code" and was only able to decipher a few words within several minutes. It seems that whatever was written somehow concerned "toilet paper". When judged in the light of a combination of behavior, current beliefs, and test results, this examiner feels that the patient remains incompetent.

TESTS:

Rorschach

Word Association Test

Draw-a-Person

Bender Gestalt

TAT

ATTITUDE AND PSYCHOLOGICAL CHARACTERISTICS:

The patient was oriented and reasonably alert. He denied hallucinations. He discussed the results of prior testing

done here and it was obvious that he has seen copies of at least the results of 7-28-60. He was firm in his conviction that he has not been treated fairly by Mr. Davis or Dr. Gumanis.

SC:fd

[993]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-25738
Date examined: 4-3-62
Referred by: Dr. Gumanis
Age: 53
Educ: 1 1/2 yrs. college

SUMMARY AND CONCLUSIONS:

This patient has been seen on three previous occasions, the latest of which was on 6-1-61. He has been found to be emotionally volatile, overly suspicious, depressed, and paranoid.

The subject stated that he did not wish to take any tests at this time and that he, therefore, would not do so. He was polite but firm in refusing to re-consider this action. He was willing to talk, however, and expressed the same beliefs that he has maintained for approximately the past 10 years. These concern the "slander and blackmail" that he has been subjected to by "certain elements within the Republican Party:. He no longer writes his observations "in code" but did have a small notebook that he allowed this examiner to read. This noted the "logic" behind why he is considered paranoid and also contained an account of alleged mis-treatment of patients. He also wrote of various homosexual acts that he claims have occurred here.

SC:fd

[994]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-25738
Date examined: 12-16-63
Referred by: Dr. Gumanis
Age: 55
Educ: 1 1/2 years College

SUMMARY AND CONCLUSIONS:

This patient refused to come in for interview. According to the Psychiatric Aide who talked with him, the patient stated that the Examiner is a liar, and he did not want to see him.

The patient has been evaluated on four previous occasions, twice by the writer and twice by another Psychologist. On each occasion he gave strong evidence or paranoid thinking and expressed ideas that he was being victimized by untruths.

JCD:fhp

[995]

PSYCHOLOGICAL EXAMINATION V

Kenneth Donaldson, A-25738
Date examined: 1-2-64
Referred by: Dr. Gumanis
Age: 55
Educ: 1 1/2 years College

SUMMARY AND CONCLUSIONS:

The patient's current test results, current behavior, and current beliefs continue to reflect a paranoid type thinking disorder. He remains overly suspicious of the motives of others, unduly negativistic and emotionally volatile. He refuses to believe that his hospitalization was necessary and writes "My anger has come about from the manner in which I was railroaded here and held all these years without requiring or receiving any treatment from any doctor." He further writes "to complicate my difficulties in the hospital, certain patients and employees carried on a campaign of villification and hard-timing of me for five years." He also writes that a particular congressman from New Jersey "filed a list of six of them with the United States Department of Justice. The fact that the filing almost stopped the hard-timing served my purposes as far as my stay here is concernted." He states that the patient and employees responsible for his difficulties were carrying out the instructions of the same political group that has harrassed him for years. He plans to bring all of

this "into the open" when the book that he has written is published.

TESTS: Rorschach

Word Association Test

Sentence Completion

Self Description

ATTITUDE AND CHARACTERISTICS:

The subject was oriented and reasonably alert but only passively cooperative. Hallucinations were denied. He claimed that arrangements are being made for him to go to a half-way house in the North.

SC:fhp

[996]

PSYCHOLOGICAL REPORT

Kenneth Donaldson, A-25738
Date: 1-6-64
To: Dr. O'Conner
Age: 55
Educ: 1 1/2 years College

A review of the record indicates that Mr. Donaldson initially underwent psychological testing in this hospital on 9-19-58. He subsequently has been evaluated by psychologists four times, 7-28-60, 6-1-61, 4-3-62, and 1-2-64. On one of these occasions, 4-3-62, he refused to take any psychological tests. On 12-16-63 he refused an appointment for psychological examination on the grounds that he considered the psychologist a liar and did not want to see him.

The first two psychological examinations were conducted by the writer. The impression gained both from statistical test date and from statements he made concerning discrimination against himself by persons both here and in Pennsylvania, was that he suffered from a psychosis. At the time of the second examination Mr. Donaldson stated that the person who did the previous psychological examination was either incompetent or dishonest. It is obvious that this attitude toward the psychologist still prevails even though he attributed the dishonesty to a statement concerning hallucinations which was in fact not reported by the psychologist but it was said to appear on his commitment papers.

Subsequently he has been evaluated on four occasions by another psychologist. Each time celusional and sometimes bizarre material has been elicited. In view of the fact that the patient has continued to maintain that his statements have not been accurately reported, he was asked to express himself in writing. The statements contained there, which are now on file with other psychological data, and are reported in the most recent psychological examination, are suggestive of serious mental disorder.

The patient's test record as well as his attitude and expressed ideas lead to the opinoin that the patient was suffering from paranoid ideas on his admission to this hospital and that his thinking has shown no significant change to the date of the last psychological examination on 1-2-64.

Julian C. Davis
Chief Psychologist

[997]

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson: A-25738
Date examined: 3-4-66
Referred by: Dr. O'Conner
Educ: 1 1/2 years Syracuse University

SUMMARY AND CONCLUSIONS:

Mr. Donaldson was seen in the company of Doctor Fredericson in whose office the interview took place. Mr. Donaldson walked in quickly, acknowledged the introduction to Doctor Fredericson and in response to the question "How are you?" stated that he was exactly as he has always been.

He declined to sit down and as he walked about the room made an emphatic statement that he did not plan to be examined again. "If you want to know the reasons for my refusal consult my attorney." In response to the question as to the name of his present attorney he said, "Mr. George Stallings." He then left the room.

JCD:fhp

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-35738
Date Examined: 7-13-67
Referred by: Dr. Hanenson
Age: 59
Educ: 2 years college

SUMMARY AND CONCLUSIONS:

This patient has been tested on numerous previous occasions. His degree of cooperation has varied markedly. His behavior, his written and spoken beliefs, and the test results have led to the conclusion that he was incompetent.

Current test results and behavioral observations indicate that he remains incompetent. The lack of any real change in his thinking over a considerable period of years is, in fact, the characteristic most easily noted. His condition is such that he cannot be considered capable of adjusting without aid and supervision, but he claims that he is willing to be released on a trial visit status and names a friend as one who would accept him under these conditions.

TESTS:

Rorschach

Word Association

Draw-a-Person

SC:ejy

PSYCHOLOGICAL EXAMINATION

Kenneth Donaldson, A-35738
Date examined: 3-19-68
Referred by: Dr. Hanenson
Age: 59
Educ: 2 years college

SUMMARY AND CONCLUSIONS:

This pateint has been seen and tested on numerous previous occasions. His behavoir, his written and spoken beliefs, and his test data have, when combined, led to the conclusion that he has been incompetent.

Current test and interview results reflect the first changes in his thinking that have been noted since he was first seen. There are no basic alterations in his disorder but he does appear to have become more composed, less sure of his delusions, and generally more cooperative. It is felt that he cannot be considered fully competent but he is willing and anxious to be released to a friend whom he says is eager to take him on a Trial Visit.

TESTS: Rorschach

Self Description

ATTITUDE AND CHARACTERISTICS:

Mr. Donaldson was polite, oriented, alert, and cooperative. He stated that he has done considerably better since his transfer to Dept. "C". In fact, he did not express any complaint of his present stay here. This, in itself, is unusual.

SC:fhp

[1000]

PSYCHOLOGICAL REPORT

Kenneth Donaldson, A-25738
Date Examined: 2-6-70
Referred by: Dr. Rodriguez
Age: 61
Educ: 2 yrs. college
Type Admission: Regular

REASON FOR ADMISSION:

Incompetent because of paranoid schizophrenia.

ATTITUDE AND PSYCHOLOGICAL CHARACTERISTICS AT THE TIME OF INTERVIEW:

This patient has been evaluated on ten occasions by this service and at least on one occasion by a psychologist not associated with this hospital. As this patient was last evaluated three months ago, it is felt that he need not be seen for further psychological evaluation at the present time, for reasons that will become obvious. Instead, a summary will be presented of all the previous psychological evaluations:

9-19-58 - Rorschach, MMPI and DAP in accordance in that the patient is a paranoid individual.

7-28-60 - No change from earlier findings. Rorschach content indicates bizarre content and deteriorated logic.

6-1-61 - Considered to be emotionally volatile and oversuspicious. Shown some notes about the hospital, taken in a "code" that not even the patient could understand.

4-3-62 - Refused testing, but expressed some beliefs as before.

1-2-64 - Patient's test results, behavior, and beliefs continue to reflect a paranoid thinking disorder.

1-6-64 - Report on the patient summarizes above findings.

8-9-65 - Letter from Doctor F. J. Calhoun, psychologist who made an independent evaluation, agrees with the above findings.

3-4-66 - Patient refused testing and left the room.

7-13-67 - Test results and behavioral observations indicated the patient to still be incompetent.

3-19-68 - Some progress noted. No basic alterations in his disorder were seen, but appeared to be more composed, less sure of his delusions, and generally more cooperative. However, was not considered to be fully competent.

11-12-69 - Rorschach record renders a "classic paranoid protocol." Although the patient's thinking was considered to still be distorted, it was suggested that further change is unlikely. Some

plan to get him out of the hospital was recommended, as the patient has been in the hospital for a number of years.

SUMMARY:

It should be evident that the patient is suffering from a chronic paranoid disorder and that further progress is quite unlikely. The recommendation set forth on the report of 11-12-69 should be given consideration.

AVD:fhp

[1001]

PSYCHOLOGICAL REPORT

Kenneth Donaldson, A-25738
Date Examined: 3-27-70
Referred by: Dr. Rodriguez
Age: 61
Educ: 2 yrs. college
Type Admission: Regular

A comprehensive summary of the numerous psychological evaluations of this patient conducted at various times since 1958 is given in a report dated 2-6-70.

Presently, Mr. Donaldson is friendly, courteous, and seemed pleased to discuss the case he has now pending in the Supreme Court of the United States. He recognizes that the Court may not rule on his case but he and his attorney, who is also a psychiatrist, are hopeful that the case will be heard in the near future. Because of this court action, and his belief that it will be decided in his favor, he is not interested in leaving the hospital at this time on any basis other than with his full competency restored. He recently declined to have his case presented to the staff because his attending psychiatrist could not guarantee that he would be given a competency discharge.

Mr. Donaldson alleges in his suit that he was illegally committed, that he has never been mentally ill and therefore has been unjustifiably held in the hospital. Apparently a third point in which his attorney seems more interested than

he is the allegation that he is receiving no treatment in the hospital and therefore should be released.

The patient has steadfastly maintained essentially the same position on all major points regarding his hospitalization since he has been here. He now appears to be on good terms with this examiner which has not always been the case and now acknowledges that various specific members of the staff have tried to help him. Nonetheless he feels that he has been done an injustice and he has been held primarily because he has refused to acknowledge that he has ever been mentally ill.

In the event of his release he said he would draw slightly over $100 per month from Social Security and allowed to earn a slightly amount. He hopes to augment his income by writing on mental health topics.

In my opinion Mr. Donaldson has fixed delusional ideas, accepting more or less uncritically any information that supports his position and rejecting any that is contradictory. I do not believe that his ideas are dangerous to himself or others, therefore I do not think continued hospitalization is necessary.

JCD/fhp

[10]

Q What provisions were there for release without a competency certificate?

A The only other way they could get out would be on trial visit status.

Q Could you explain what was involved in the trial visit. To whom would a patient be released?

A Well a patient could be released on trial visit strickly by his own doctor, without any other doctor being involved. He would be released to his next of kin, or if not to his next of kin, to someone else with permision of the next of kin.

Q And this would be a non-competency release?

A Yes.

Q Were such releases permitted if the patient were going to go out of state?

A Yes. I don't recall clearly just how we did that, but I do know we had a method of releasing them out of state.

Q And while he was released he would still be an incompetent?

A Yes. He would still be under his original commitment.

394.21 Hospitalization of the mentally ill; involuntary.—

(1) AUTHORITY TO RECEIVE INVOLUNTARY PATIENTS.—The head of a hospital may receive therein for observation, diagnosis, care and treatment any individual, and in the case of a public hospital only such persons as qualify under §394.27, whose admission is applied for under any of the following procedures:

(a) Hospitalization on medical certification; nonjudicial procedure, shall apply only to private and county operated hospitals.

(b) Hospitalization on medical certification; emergency procedure, shall apply only to private and county operated hospitals.

(c) Hospitalization without endorsement or medical certification; emergency procedure, shall apply only to private and county operated hospitals.

(2) HOSPITALIZATION ON MEDICAL CERTIFICATION; NONJUDICIAL PROCEDURE.—

(a) Any individual may be admitted to a hospital upon

1. Written application to the hospital by a friend, relative, spouse, or guardian of the individual, a health or public welfare officer, or the head of any institution in which such individual may be, and

2. Certification by two licensed practicing physicians of good professional standing, each of whom shall be a graduate of a school of medicine recognized by the American medical association, that they have examined the individual and that they are of the opinion that

A. He is mentally ill, and

B. Because of his illness is likely to injure himself or others if allowed to remain at liberty, or

C. Is in need of care or treatment in a mental hospital and because of his illness lacks sufficient insight or capacity to make responsible application therefor.

The certification by the said physicians may be made jointly or separately, and may be based on examination conducted jointly or separately, an individual with respect to whom such certification has been issued may not be admitted on the basis thereof at any time after the expiration of fifteen days after the date of examination. The head of the hospital admitting the individual shall forthwith make a report of such admission to the county judge of the county in which such hospital is situate.

(b) Such certification, if it states a belief that the individual is likely to injure himself or others if allowed to remain at liberty, shall upon endorsement for such purpose by the county judge of the county in which the individual is resident or present, authorize any sheriff, deputy sheriff, or police officer to take the individual into custody and transport him to a hospital designated in the application.

(3) HOSPITALIZATION ON MEDICAL CERTIFICATION; EMERGENCY PROCEDURE.—

(a) Any individual may be admitted to a hospital upon

1. Written application to the hospital by any health or law enforcement officer or any other person stating his belief that the individual is likely to cause injury to himself or others; if not immediately restrained, and the factual grounds for such belief, and

2. A certification by at least one licensed physician, as in this chapter qualified, that he has examined the individual and is of the opinion that the individual is mentally ill and because of his illness, is likely to injure himself or others if not immediately restrained.

An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after the expiration of three days after the date of examination. The head of the hospital admitting the individual shall forthwith make a report of such admission to the county judge of the county in which such hospital is situate.

(b) Such a certificate, upon endorsement for such purpose by the county judge of the county in which the individual is present, shall authorize any sheriff, deputy sheriff or police officer to take the individual into custody and transport him to a hospital as designated in the application.

(4) HOSPITALIZATION WITHOUT MEDICAL CERTIFICATION OR JUDICIAL ENDORSEMENT; EMERGENCY PROCEDURE.—Any sheriff, deputy sheriff or police officer who has reason to believe that

(a) An individual is mentally ill, and because of his illness, is likely to injure himself or others if allowed to remain at liberty pending examination and certification by a licensed physician, or

(b) An individual who has been certified under subsections (2) and (3) of this section likely to injure himself or others and therefore cannot be allowed to remain at liberty pending the judicial endorsement of the certificate as provided in those subsections may

take the individual into custody, apply to a hospital for his admission, and transport him thereto. The application for admission shall state the circumstances under which the individual was taken into custody and the reasons for the officer's belief. The head of the hospital admitting the individual shall forthwith make a report of such admission to the county judge of the county in which such hospital is situate.

(5) RIGHT TO RELEASE ON APPLICATION.—An involuntary patient who requests his release or whose release is requested in writing by his legal guardian, parent, spouse or adult next of kin, shall be released forthwith, except that

(a) If the patient by reason of his age, was admitted on the application of another person, his release prior to becoming twenty-one years of age, may be conditioned upon the consent of his parent or guardian, or

(b) If the head of the hospital within the hours of the ensuing business day, from the receipt of the request, files in the office of the county judge in the county where such patient is situate certification that in his opinion the release of the patient would be unsafe for the patient or others, release may be postponed for as long as the county judge determines to be necessary for the commencement of proceedings for judicial hospitalization, but in no event for more than five days; provided however, that in the event it becomes necessary that an involuntary patient in a state hospital be judicially committed after admission therein, as provided in this section, the costs incident to such commitment proceedings shall be borne by the county of the patient's residence.

(6) PAYMENT FOR CARE OF MENTALLY ILL.—Such reasonable charges and expenses as may be fixed by a hospital, or, in the case of a state hospital by the board of commissioners of state institutions of Florida, for the care, maintenance and treatment of a mentally ill person admitted to such hospital under the provisions of this section, shall be a lawful charge against the estate or property, real, tangible or intangible, of said mentally ill person in this state; that said charges and expenses may be lawfully paid from the estate of said mentally ill person by any authorized personal representative, parent or legal guardian of said mentally ill person thereafter appointed; provided, however, that the payment thereof, in advance, or otherwise, shall never be a prerequisite to the care, maintenance and treatment of any mentally ill person in a public

hospital under any circumstances whatsoever; that any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against said person or his duly authorized personal representative, parent or legal guardian, shall be brought by the state attorney of the judicial circuit in which said mentally ill person is resident or by the office of the attorney general of Florida or both such state attorney and office of the attorney general.

History.—§1, ch. 20504, 1941; am. §2, ch. 23157, 1946. Am. §2, ch. 29909, 1955.

391.22 Adjudication of persons mentally or physically incompetent; procedure.—

(1) PETITION FOR EXAMINATION OF PERSONS BELIEVED TO BE MENTALLY OR PHYSICALLY INCOMPETENT; PETITION.—Whenever any person within this state is believed to be incompetent by reason of mental illness, sickness, drunkenness, excessive use of drugs, insanity, or other mental or physical condition, so that he is incapable of caring for himself or managing his property, or is likely to dissipate or lose his property or become the victim of designing persons, or inflict harm on himself or others, application by written petition, under oath, may be made to the county judge of the county wherein the alleged incompetent resides or may be found, or, in the absence or disability of the county judge, to the judge of the circuit court of the county wherein such petition is filed, for a judicial inquiry as to the mental or physical condition, or both, of the alleged incompetent.

(2) WHO MAY FILE PETITION.—The petition may be filed by:

(a) The mother, father, brother, sister, husband, wife, child or next of kin of the alleged incompetent;

(b) Any three citizens of the state of Florida;

(c) The sheriff of the county where such alleged incompetent resides, if none of the persons named in paragraphs (a) and (b) file such petition;

(d) Any citizen of this state who requests the examination of himself, provided he presents a certificate of a physician authorized to practice medicine in this state, certifying that he believes such petitioner to be incompetent for any one or more of the reasons specified in subsection (1) of this section.

(e) In addition to the persons set forth and described in paragraphs (a)-(d), who may file a petition for the examination of a person believed to be incompetent as contemplated by this section, the superintendent of the state

prison farm in Union county, and the superintendent of the branch thereof in Marion county, are hereby authorized to file such a petition with respect to any person at said institution.

(3) NECESSARY ALLEGATIONS.—Every petition shall allege the name, approximate age, address, if known, and nature of the disability of such alleged incompetent, and shall name all the members of his family with their addresses, if known to petitioner, and shall pray for an examination of such alleged incompetent as provided by law and for an order adjudging such person to be incompetent.

(4) NOTICE; HEARING.—Whenever a petition is filed the county judge, or, in his absence or disability, a circuit judge, shall set a date for an immediate or a very early hearing on the petition. Reasonable notice shall then be given in writing to the alleged incompetent and to one or more members of his family, if any (other than petitioner) are known to the county judge to be residing within his jurisdiction, notifying them that application has been made for an inquiry into either the mental or the physical condition, or both, of the alleged incompetent and that a hearing on such application will be had before the judge having jurisdiction at the time and place to be specified in said notice. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and shall not be bound by the rules of evidence. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court may appoint counsel.

(5) DETENTION OF ALLEGED INCOMPETENT.—

(a) If it appears, before the date of the hearing, from evidence produced before the judge, by affidavit or otherwise, that it is for the best interest of the alleged incompetent or others that he be detained for observation and examination, said judge may order that said alleged incompetent be placed in the protective custody of the spouse or of one or more of the near relatives of the incompetent or in the protective custody of any other responsible citizen of the state.

(b) The judge may, if in his opinion the public safety or the safety of the alleged incompetent requires it, direct that the sheriff forthwith confine said alleged incompetent in some specified place until the further proceedings herein provided for have been had, or until his further order; the judge may also order the detention of said person for such

reasonable time as may be necessary for proper medical observation and examination, not to exceed fifteen days, unless extended for good cause; provided, that in all such cases, there shall first be filed with said judge an affidavit setting forth facts which make such detention necessary.

(6) EXAMINING COMMITTEE.—

(a) The judge shall appoint an examining committee consisting of a responsible citizen of this state and two practicing physicians of good professional standing, each of whom shall be a graduate of a school of medicine recognized by the American medical association, which examining committee within a reasonable time after notice of their appointment, shall proceed to make such examination of said person as will enable it to ascertain thoroughly his mental and physical condition as of the time of the examination. No petitioner shall serve as a member of the examining committee.

(b) If the examining committee considers the person under examination to be incompetent, it shall determine whether the condition is acute or chronic, what the apparent cause is, and what hallucinations, if any, he has, and what the age and propensities of the person examined are. The report shall cover specifically the findings of the committee; it shall be on the form hereinafter prescribed, shall be signed by each member of the examining committee, and shall be transmitted immediately to the judge. If the report of the designated examiners is to the effect that the proposed patient is not mentally ill, the court may without taking any further action terminate the proceedings and dismiss the application.

(7) INDIGENCY OF INCOMPETENT; ATTORNEY'S FEES; WITNESSES.—

(a) The judge shall ascertain, or direct the examining committee to ascertain whether the person being examined is indigent or possesses sufficient available means for his support. This investigation may extend to the possibilities of acquiring property in the future.

(b) At any state of the proceeding the judge may, upon the application of any alleged incompetent who is indigent, appoint an attorney to represent said person, and the compensation of said attorney shall be fixed by the court in an amount not to exceed fifty dollars and shall be paid by the county commissioners out of the general fund of the county.

(c) If the alleged incompetent person is found to be indigent and unable to procure the attendance of witnesses in his behalf, the judge shall, upon written application therefor, summon a reasonable number of witnesses for such

person, and the witness and mileage fees of said witnesses shall be paid by the county commissioners of the county from its general fund.

(8) NOTICE; PROCESS; TESTIMONY.—In any trial or proceeding under this section, notice of hearing, service of notice or process, the taking of depositions, summoning of witnesses, and the taking of testimony shall be governed by rules pertaining to such matters in the general guardianship law of this state except as otherwise specified in this section.

(9) JUDGMENT.—If the judge, from the report of the examining committee and the hearing, finds that the person under investigation is incompetent, mentally or physically or both, he shall so adjudge, and his judgment shall set forth the nature and extent of the incompetency; but, if he finds that such person is not incompetent he shall dismiss the cause and discharge said person.

(10) EFFECT OF JUDGMENT.—

(a) After the judgment adjudicating a person to be mentally incompetent is filed in the office of the county judge, such person shall be presumed to be incapable, for the duration of such incompetency, of managing his own affairs or of making any gift, contract, or any instrument in writing which is binding on him or his estate. The filing of said judgment shall be notice of such incapacity.

(b) After a judgment adjudicating a person to be physically incompetent is filed in the office of the county judge, such person shall be presumed to be incapable, for the duration of such incompetency, of making any gift inter vivos or any contract which will bind him or his estate. The filing of said judgment shall be notice of such incapacity.

(11) COMMITMENT.—

(a) Whenever any person who has been adjudged mentally incompetent requires confinement or restraint to prevent self-injury or violence to others, the said judge shall direct that such person be forthwith delivered to the superintendent of the Florida state hospital, for care, maintenance, and treatment, as provided in §§394.09, 394.24, 394.25, 394.26 and 394.27, or make such other disposition of him as he may be permitted by law.

(b) The order of commitment shall be accompanied by a copy of the report of the exam-

ining committee, the judgment of mental incompetency, and copies of such other instruments and records as may be required by the board of commissioners of state institutions; said copies shall be delivered to the superintendent of the said hospital or his agent and shall be his authority for the detention and custody of said person.

(c) Where, however, the judge finds, from the report of the examining committee or otherwise, that such person does not require confinement or restraint to prevent self-injury or violence to others and that treatment in the Florida state hospital is unnecessary or would be without benefit to such person, he may further adjudge and decree that such person is harmless and that confinement or restraint of such person is unnecessary, and that he be delivered to a guardian of his person or to any responsible person who may offer to assume the care and custody of such harmless person, without cost to the state or county, or, if he is also found indigent and without funds for self-support, that he be delivered to the county commissioners of the county of his residence, for care and maintenance in the manner provided for paupers.

(d) After adjudication and commitment and before admission to the Florida state hospital the county judge for good cause shown may revoke said commitment and discharge the alleged incompetent.

(12) TEMPORARY HOSPITALIZATION AND CONFINEMENT OF PERSONS SUBJECT TO PROCEEDINGS OF ADJUDICATION OF MENTAL COMPETENCY.—

(a) Any person under a petition for examination to determine his mental competency before the county judge of any county in this state, as provided in this section, upon the recommendation of the examining committee appointed by the county judge, as provided in this section, that such person is, in the opinion of said examining committee only temporarily incompetent and through specialized treatment may be speedily restored to competency, may, by order of the county judge, be committed to an approved hospital with the consent of the hospital, and there be subject to observation and temporary treatment for a period to be fixed by the county judge, but in no event to exceed three months; such procedure shall be taken only upon application of a person authorized to file the petition as provided in subsection (2) of this section.

(b) Such order of commitment by the county judge shall not deprive the person so confined of any civil rights subject to final determination of his mental capacity. At the expiration of the period fixed by the order of the county judge, or upon the recommendation of the physician attending such person, at any time prior to the expiration of said period of confinement, the county judge shall reappoint the original examining committee, or appoint a new committee, who shall proceed into the examination of the mental capacity of such person, as provided by this section in original proceedings.

(13) PAYMENT FOR THE CARE OF COMMITTED INCOMPETENTS.—Reasonable charges and expenses for the care, maintenance and treatment of committed incompetents under any provision of this section and reimbursement for such charges and expenses that may be advanced by the state or any political subdivision thereof, shall be a lawful charge against the person and estate or property, real, tangible or intangible, of said incompetent in this state. Such charges and expenses may lawfully be paid from the estate of the said incompetent by any authorized personal representative, parent, or legal guardian of said incompetent; provided, however, that the payment thereof, in advance or otherwise, shall never be a prerequisite to the care, maintenance and treatment of any committed incompetent under any circumstances whatsoever. In cases of commitments to state hospitals or institutions, such charges and expenses shall be fixed or approved by the board of commissioners of state institutions of Florida. In the case of commitments to private hospitals or to public hospitals or institutions other than state hospitals or institutions, such charges and expenses shall be fixed or approved by the board of county commissioners of the county wherein the patient is or has been committed. Any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against the person or his duly authorized personal representative, parent, or legal guardian, shall be brought by the state attorney of the judicial circuit in which said incompetent was committed, or by the office of the attorney general or both such state attorney and office of the attorney general, as the case may be, as party plaintiff.

(14) HOSPITALIZATION BY AN AGENCY OF THE UNITED STATES.—If an individual ordered to be hospitalized pursuant to the previous section is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of such advice from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such court to any hospital or institution operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized, shall with respect to such individual be vested with the same powers as the heads of hospitals within this state with respect to detention, custody, transfer, conditional release, or discharge of patients.

An order of a court of competent jurisdiction of another state, or of the district of Columbia, authorizing hospitalization of an individual by any agency of the United States shall have the same force and effect as to the individual while in this state as in the jurisdiction in which is situated the court entering the order; and the courts of the state or district issuing the order shall be deemed to have retained jurisdiction of the individual so hospitalized for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his hospitalization, as is provided in this section with respect to individuals ordered hospitalized by the courts of this state. Consent is hereby given to the application of the law of the state or district in which is located the court issuing the order for hospitalization with respect to the authority of the chief officer of any hospital or institution operated in this state by any agency of the United States to retain custody, transfer, conditionally release, or discharge the individual hospitalized.

(15) RESTORATION TO MENTAL COMPETENCY; PROCEDURE.—

(a) In all cases where any person who has been heretofore, or hereafter may be adjudged incompetent, whether such person be confined in the Florida state hospital or has been discharged therefrom, or is in the custody of any person, persons, or committee, it shall be lawful for any relative, husband or wife, or next friend of such person as the case may be, to apply by petition to the county judge of the county where the alleged incompetent was adjudged incompetent, or where such person may be living at the date of such application, to have the mental status of such adjudged incompetent inquired into, as to whether such person is still incompetent and unable to manage his or her affairs; provided, however, that when the alleged incompetent is confined in the Florida state hospital, or any branch thereof, the proceedings shall be brought in the county in which said institution is located.

(b) Such petition shall contain all the facts upon which an order restoring such person to a judicially sound mental condition or status of competency is prayed, and shall be under oath. Such proceeding shall be ex parte and without respondent being named therein; provided however, that service of a copy of said petition shall be served upon the state attorney of the judicial circuit embracing the county in which the cause is brought, and he shall represent the state in such cases. In the event a legal guardian, as provided under the laws of Florida, has been appointed, of the person or property of said adjudicated incompetent, that then and in that event service of a copy of said petition for restoration shall be made upon said legally appointed guardian of the person or property of the adjudicated incompetent. Proof of service of copies of the notice, certificates, and petition shall be by affidavit or acknowledgment to be filed with the court.

(c) Upon the filing of such petition, the county judge of such county shall cause the adjudicated incompetent to be brought before him at an early date, after reasonable notice to the state attorney and legal guardian of said adjudicated incompetent; the time of said notice to be fixed by the county judge, at which time the issue in the said petition shall be tried, unless for the cause of justice the time shall be enlarged in the discretion of the court. In all other respects the hearing before the county judge on said petition shall be had in the same manner as the hearing provided in subsection (4) of this section.

(d) If upon the hearing of such cause it shall appear to the court that the adjudicated incompetent is of sound mind and is capable of managing his or her own affairs, the county judge hearing such cause shall immediately issue his order herein, which order shall be to the following effect:

1. That said person is of sound mind judicially and is capable of managing his own affairs.

2. That said person be immediately restored to his personal liberty.

3. That the guardian, committee, or custodian, as the case may be, of such person, shall, within thirty days, or such time as the county judge may fix, make full settlement with such person so restored to the status of judicial competency of all his or her property in their or his hands, custody or control, as the case may be, under penalty of contempt of court and the punishment thereof.

(e) The county judge entering such order shall forthwith cause a certified copy thereof to be forwarded to the office of the county judge of the county where said incompetent was originally committed, and said certified copy of order of restoration shall be filed in the original proceedings of record in said county; and a certified copy thereof shall be forwarded to the office of the superintendent of the Florida state hospital.

(16) RESTORATION TO MENTAL COMPETENCY; BY CERTIFICATE.—

(a) *Certificate.* When a person because of mental incompetency has been committed to the Florida state hospital, or to any institution known as a United States veterans bureau hospital, mentioned in §293.16, and when said person has been under observation at the said hospital or institution for a period of thirty days or more, if a majority of the medical staff of said hospital or institution who are graduates of schools recognized by the American medical association, are of the opinion that said person has recovered his reason and is capable of managing his own affairs, then the superintendent or the manager of said hospital or institution may issue to him a certificate so stating, signed by the three members of the medical staff of the said hospital or institution. Said certificate shall be attested by the superintendent or manager of the said hospital

or institution or someone designated by such superintendent or manager, and said certificate shall be admissible in evidence in any hearing for the restoration to sanity of such person and shall be prima facie proof that such person is sane.

(b) *Petition.* After the medical certificate has been issued as provided in the foregoing paragraph, showing that the person previously adjudged mentally incompetent has recovered his reason and is capable of managing his own affairs, the person named in said certificate, or his next friend or any of his next of kin, may file a petition in the county judge's court having jurisdiction of his case, setting forth the recovery of such incompetent and the reasons why he should be restored to his former status. Before said petition can be filed, or at the time it is filed, said certificate must be filed in the office of the county judge of the county where the judgment of mental incompetency and order of commitment were entered. If said certificate is not so filed in ninety days after its date, it shall be void. When said certificate has been filed, the petition may be filed at any time thereafter. The proceedings shall be the same in substance as those provided in subsection (15) of this section relating to restoration of mentally incompetent where no certificate has been filed or obtained.

(c) *Attorneys.* In cases of indigency the court, upon application of the incompetent, may appoint an attorney to represent faithfully such incompetent before the court. The attorney shall be entitled to a reasonable fee not to exceed fifty dollars, to be allowed by the county judge and paid by the county commissioners of the county from the county's general fund.

(17) REMOVAL OF PHYSICAL INCOMPETENCY.—

(a) *Petition.* After a judgment of physical incompetency has been entered, if the person affected thereby shall at any time thereafter become able to care for his property, he or one or more of his family or any of his next of kin may petition the court having jurisdiction of his case, setting forth the recovery of such incompetent and the reasons why he should be restored to his former status.

(b) *Notice and hearing.* The judge shall set a time for the hearing of such petition, and reasonable notice of the hearing shall be given to the incompetent, if he is not the petitioner, and to one or more of the members of his family, if any, and, if he has no family, or next of kin, known to the county judge to be within his jurisdiction, then such notice shall be given as the judge may direct.

(c) *Order.* After the hearing, if the judge shall find that such person has regained the ability to care for his property, an order to that effect shall be entered, and thereupon, such person, so far as his person and property are concerned, shall occupy the same status as though he had never been adjudicated incompetent. If a guardian has been appointed for him during such physical incompetency, such guardian shall immediately render his accounting to the court having jurisdiction and apply for his discharge as provided by the general guardianship laws of this state.

(18) FORMS.—The board of commissioners of state institutions shall cause to be prepared and prescribe forms for applications, notices, medical reports, orders of commitment, and such other forms as may be found necessary or convenient, in administering this law. The board of commissioners of state institutions shall cause said forms to be printed and distributed to the county judges of this state.

(19) APPLICATION OF THIS SECTION.—The provisions of this section shall be cumulative to all other laws on the restoration of sanity.

History.—§2, ch. 4787, 1895; §1, ch. 5264, 1903; GS 1201; RGS 2569; CGL 3925, repealed by §6, ch. 22000, 1943. §3, ch. 23157, 1945; §3, ch. 29909, 1955.

Kenneth DONALDSON, Plaintiff-Appellee,

v.

J. B. O'CONNOR, M. D. and John Gumanis, M. D.,
Defendants-Appellants.

No. 73 1813.

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United States Court of Appeals,
Fifth Circuit.

April 26, 1974.

Former patient who had been involuntarily committed, under civil commitment procedures, to state mental hospital brought action against attending physicians and others for deprivation of alleged constitutional right to receive treatment or be released from the hospital. The United States District Court for the Northern District of Florida, David L. Middlebrooks, Jr., J., rendered judgment against the attending physicians and they appealed. The Court of Appeals, Wisdom, Circuit Judge, held that patient had constitutional right to such treatment as would help him to be cured or to improve his mental condition; that evidence supported finding that attending physicians had acted in bad faith with respect to their treatment of patient and were personally liable for his injuries or deprivations of his constitutional rights; and that limitation period did not begin to run until patient's release from the hospital.

Affirmed.

1. Appeal and Error ⇐233(2)

Defendants' objections to instructions given at plaintiff's request were properly before the court on review of judgment in favor of plaintiff even though defendants did not object to

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the instructions when they were discussed in chambers or after charge was read to jury where defendants did object to the instructions in a pretrial brief.

2. Constitutional Law ⇐255(5)

Where nondangerous patient is involuntarily committed under civil commitment procedures to state mental hospital, only constitutionally permissible purpose of confinement is to provide treatment and patient has due process right to such treatment as will help him to be cured or to improve his mental condition. U.S.C.A.Const. Amend. 14; 42 U.S.C.A. § 1983.

3. Constitutional Law ⇐255(1)

Generally, as matter of due process, long-term detention is permitted only when an individual is proved, in a proceeding subject to limitations of due process clause, to have committed a specific act defined as an offense against the state and such detention is allowed only for period of time explicitly fixed by sentence. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⇐255(1)

Where detention of individual is not in retribution for a specific offense, is not limited to fixed term and has not been preceded by proceeding in which fundamental procedural safeguards have been observed, there must be a quid pro quo, such as rehabilitative treatment or minimally adequate habilitation and care where rehabilitation is impossible, in order to justify confinement. U.S.C.A.Const. Amend. 14.

5. Civil Rights ⇐13.13(3)

In action by former mental patient who had been involuntarily committed under civil procedures to state mental hospital against attending physicians for deprivation of right to receive treatment or be released, evidence concerning withholding of treatment, blocking of efforts to have patient released, confinement of patient even though he was not dangerous or with reckless disregard as to whether he was dangerous and failure to do best that could have been done with available resources sustained determination that attending physicians had acted in bad faith and were personally liable for injuries sustained by patient and for deprivation of patient's right to receive treatment. U.S.C.A.Const. Amend. 14; 42 U.S.C.A. § 1983.

6. Federal Civil Procedure ⇐2096

Objection to composition of jury was not timely raised where it was not mentioned until after jury was impanelled. 28 U.S.C.A. § 1863(b)(5).

7. Federal Civil Procedure ⇐2092

Jury selection plan allowing certain specified classes of persons, including actively engaged members of the clergy and actively practicing attorneys, physicians, dentists and nurses to be excused from jury duty if they desired was in compliance with Jury Selection and Service Act. 28 U.S.C.A. § 1863(b)(5); U.S.C.A.Const. Amend. 7.

8. Limitation of Actions ⇐58(1)

Limitation period applicable to civil rights action brought by former patient of state mental hospital against attending physician for deprivation of his right to receive treatment or be released did not begin to run until patient's release from hospital; period did not begin to run on date patient was taken from care of defendant physician. 42 U.S.C.A. § 1983; F.S.A. § 95.11(4), (5)(a), (6).

9. Limitation of Actions ⇐55(6)

When tort involves continuing injury, cause of action accrues and limitation period begins to run at time tortious conduct ceases.

10. Limitation of Actions ⇐55(6)

Cause of action for false imprisonment does not accrue until release of imprisoned party.

11. Courts ⇐375(4)

In a civil rights suit, even though state statute of limitation is applicable, question of when cause of action has accrued is a matter of federal rather than state law. 42 U.S.C.A. § 1983.

12. Civil Rights ⇐13.4(1)

Attending physician was not entitled to immunity from liability under Civil Rights Act for deprivation of right of patient at state mental hospital to receive treatment absent finding that he had acted in good faith. 42 U.S.C.A. § 1983.

13. Civil Rights ⇐13.8(1)

Full range of officials' immunities available at common law does not apply in actions brought under Civil Rights Act. 42 U.S.C.A. § 1983.

14. Civil Rights ⇐13.13(3)

Evidence that physicians who attended patient who had been involuntarily committed to state mental hospital had acted maliciously, wantonly or oppressively was sufficient to sustain award of punitive damages for deprivation of patient's right to receive treatment or be released. 42 U.S.C.A. § 1983.

15. Civil Rights ⇐13.10

Failure of patient who had been involuntarily committed to state mental hospital to petition for restoration of his competency did not preclude determination that attending physicians had deprived patient of his right to receive treatment or to be released where state law did not permit person adjudged incompetent to petition on his own for restoration of competency. F.S.A. § 394.22.

Appeals from the United States District Court for the Northern District of Florida.

Before RIVES, WISDOM and MORGAN, Circuit Judges.

WISDOM, Circuit Judge:

This case requires us to decide for the first time the far-reaching question whether the Fourteenth Amendment guarantees a right to treatment to persons involuntarily civilly committed to state mental hospitals. The plaintiff-appellee, Kenneth Donaldson, was civilly committed to the Florida State Hospital at Chattahootchee in January 1957, diagnosed as a "paranoid schizophrenic". He remained in that hospital

for the next fourteen and a half years. During that time he received little or no psychiatric care or treatment.

Donaldson contends that he had a constitutional right to receive treatment or to be released from the state hospital. In this action, filed February 24, 1971, he seeks damages under 42 U.S.C. § 1983 [1] against five hospital and state mental health officials who allegedly deprived him of this constitutional right.[2] A jury returned a verdict of $28,500 in compensatory damages, and $10,000 in punitive damages against the two defendants-appellants, Dr. J. B. O'Connor and Dr. John Gumanis. Dr. O'Connor, as Acting Clinical Director of the Hospital, was Donaldson's attending physician from the time of his admission until mid-1959. He was Clinical Director of the Hospital from mid-1959 until late 1963, and Superintendent thereafter until his retirement February 1, 1971. Dr. John Gumanis was Donaldson's attending physician from the fall of 1959 until the spring of 1967. He was added as a defendant by an amended complaint filed April 20, 1972. The jury returned a verdict in favor of the other three defendants.

Gumanis and O'Connor bring separate appeals to this Court. They challenge the sufficiency of the evidence to support the

1. 42 U.S.C. § 1983 provides:
   Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

2. Except when the text clearly indicates otherwise, we use the term "defendants" in this opinion to refer to Dr. Gumanis and Dr. O'Connor, against whom judgments were rendered. The other three who were sued were: Dr. Francis G. Walls, who became Acting Superintendent of the Hospital when O'Connor retired from that position in February 1971, and who held that position for about four months; Dr. Milton J. Hirschberg, who became permanent Superintendent, succeeding O'Connor, in June 1971; and Emmett S. Roberts, Secretary of the Department of Health and Rehabilitative Services in Florida at the time Donaldson filed his First Amended Complaint August 30, 1971.

jury verdict [3] and they contend that the Constitution does not guarantee a right to treatment to mental patients involuntarily civilly committed. Both argue, therefore, that the trial judge erred in denying a motion to dismiss for failure to state a claim and in instructing the jury that civilly committed mental patients have a constitutional right to treatment. In addition, Gumanis raises a number of lesser issues. We hold that the Fourteenth Amendment guarantees involuntarily civilly committed mental patients a right to treatment, and that the evidence was sufficient to support the verdict. We also reject the numerous lesser contentions advanced by Gumanis. Accordingly, we affirm the judgment in Donaldson's favor.

I.

To put the legal issues in proper context as well as to discuss the defendants' challenge to the sufficiency of the evidence, it is essential to review the facts in unusual detail.

Donaldson was committed January 3, 1957, on the petition of his father and after a brief hearing before a county judge of Pinellas County, Florida. He was admitted to the Florida State Hospital twelve days later, and soon thereafter was diagnosed as a "paranoid schizophrenic". The committing judge told Donaldson that he was being sent to the hospital for "a few weeks" to "take some of this new medication", after which the judge said that he was certain that Donaldson would be "all right" and would "come back here". Donaldson was not released until July 31, 1971, after he had instituted this suit.

3. The defendants raised the question of the sufficiency of the evidence on a motion for directed verdict made at the close of the plaintiff's evidence, and renewed at the close of all evidence. The defendants apparently did not move for judgment notwithstanding the verdict after the verdict was returned, but they did move for a new trial. The first ground they asserted in their motion for new trial was that "[t]he verdict is contrary to the clear weight of the evidence, which evidence showed that Defendants reasonably believed in good faith that due to his mental illness and need of treatment Plaintiff was properly confined".

There is little dispute about the general nature of the conditions under which Donaldson was confined for almost fifteen years. Donaldson received no commonly accepted psychiatric treatment. Shortly after his first mental examination, Donaldson, a Christian Scientist, refused to take any medication or to submit to electroshock treatments, and he consistently refused to submit to either of these forms of therapy. No other therapy was offered. At trial, Gumanis mentioned "recreational" and "religious" therapy as forms of therapy given Donaldson; but this amounted to allowing Donaldson to attend church and to engage in recreational activities, privileges he probably would have been allowed in a prison. In the oral argument on appeal the appellants' counsel made much of what they called "milieu therapy", which they said was given Donaldson. This was nothing more than keeping Donaldson in a sheltered hospital "milieu" with other mental patients; the defendants did not refer to anything specific about the "milieu" that was in any special way therapeutic.[4] Donaldson was usually confined in a locked room, where, according to his testimony, there were about sixty beds, with little more room between beds than was necessary for a chair; his possessions were kept under the bed.

At night he was often wakened by some who had fits and by some "who would torment other patients, screaming and hollering". Then there was "the fear, always the fear you have in your heart, I suppose, when you go to sleep that maybe somebody would jump on you during the night". A

4. "Milieu therapy" is a frequent response by doctors and hospitals to claims by patients that they are receiving inadequate treatment. See Halpern, A Practicing Lawyer Views the Right to Treatment, 1969, 57 Geo.L.J. 782, 786-87, n. 19. Halpern discusses "milieu therapy" in discussing Rouse v. Cameron, 1966, 125 U.S.App.D.C. 366, 373 F.2d 451, in which the District of Columbia Court of Appeals held that there was a statutory right to treatment. He notes that "milieu therapy" is an "amorphous and intangible" concept, "the easiest therapeutic claim for an institution to assert and the most difficult for a patient to refute", Halpern, *supra*, at 787 n. 19.

third of the patients in the ward were criminals. Indeed, Donaldson testified, "The entire operation of the ward was geared to criminal patients.[5]"

5. Some of Donaldson's testimony relating the conditions under which he lived is worth quoting:

"Q. Now, in the buildings you lived in Department A, were those buildings locked?
A. Yes, sir.
Q. Were the wards you lived on locked?
A. Yes.
Q. Were there metal enclosures on the windows?
A. Yes, padlocks on each window.
Q. Approximately how many beds were there in the rooms where you slept?
A. Sixty some beds.
Q. How close together were they?
A. Some of the beds were touching, the sides touched, and others there was room enough to put a straight chair if we had had a chair.
Q. Did you have chairs in the room you were in?
A. There wasn't a chair in the room I was in.
Q. All right, was there an outside exercise yard for your department?
A. Yes, there was one period in particular when nobody went out for two years.
Q. Now, Mr. Donaldson, you were civilly committed. You had not been charged with any crime, is that right?
A. That is right.
Q. Were there criminal patients on your ward?
A. There were criminal patients on the ward.
Q. Approximately what percent of the population on your ward were criminals?
A. Looking back, roughly, I would say a third. I do not know the figures for the whole department.
Q. Let's just talk about your ward.
A. Okay, I would say about a third in the wards I was in.
Q. Now, did you sleep in the same rooms as the criminal patients?
A. Yes.
Q. Did you get up at the same time?
A. Yes.
Q. Did you eat the same food?
A. Yes.
Q. In the same dining room?
A. Yes.
Q. Did you wear the same clothes?
A. Yes. The entire operation of the wards I was on was geared to the criminal patients.

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During his first ten years at the hospital, progress reports on his condition were irregularly entered at intervals averaging about one every two and a half months. During those first ten years, he requested grounds privileges and occupational therapy; his requests were denied. In short, he received only the kind of subsistence level custodial care he would have received in a prison, and perhaps less psychiatric treatment than a criminally committed inmate would have received.

At the time Donaldson was admitted to the hospital in 1957, O'Connor was Assistant Clinical Director of the hospital. As Assistant Clinical Director, he was in charge of the hospital's Department A, then the white male ward, where Donaldson was assigned upon his admission to the hospital. In that

Q. Let me ask you, were you treated any differently from the criminal patients?
A. I was treated worse than the criminal patients.
Q. In what sense were you treated worse?
A. The criminal patients got the attention of the doctors. Generally a doctor makes a report to the court every month.
Q. For the criminal?
A. On the criminal patients, and that would be a pretty heavy case load. It didn't give them time to see the ones who weren't criminal patients.
Q. Was there a place on the ward you had access to for keeping personal possessions?
A. No, not at that time.
Q. What did you do with your personal possessions?
A. I kept mine in a cedar box under the mattress of my bed.
Q. Was there a place in the wards where you could get some privacy?
A. No, not anytime in all of the years I was locked up.
Q. Were you able to get a good nights sleep?
A. No.
Q. Why not?
A. On all of the wards there was the same mixture of patients. There were some patients who had fits during the night. There were some patients who would torment other patients, screaming and hollering, and the fear, always the fear you have in your mind, I suppose, when you go to sleep that maybe somebody will jump on you during the night.
They never did, but you think about those things. It was a lunatic asylum."

position, O'Connor was Donaldson's attending physician. At that time, Gumanis was a staff physician in Department A. On July 1, 1959, O'Connor became Clinical Director of the hospital, and in the fall of 1959, Gumanis was placed in charge of Department A, and became Donaldson's attending physician. O'Connor was promoted from the position of Clinical Director to the position of Superintendent July 30, 1963, and served as Superintendent until he retired February 1, 1971. Gumanis served as Donaldson's attending physician until April 18, 1967, when Donaldson was transferred to Department C, until that time the Negro male ward. After the transfer, Donaldson's attending physician was Dr. Israel Hanenson, the head of Department C until Dr. Hanenson's death in the fall of 1970. After that, until his release, Donaldson's attending physician was Dr. Jesus Rodriguez.

Donaldson brought this suit while he was still a patient at the hospital. In his original complaint, Donaldson sought to bring this suit as a class action on behalf of all patients in the hospital's Department C. In addition to damages, to the plaintiff and to the class, the complaint sought habeas corpus relief directing the release of Donaldson and of the entire class, and sought broad declaratory and injunctive relief requiring the hospital to provide adequate psychiatric treatment.

After Donaldson's release, and after the district court dismissed the action as a class suit, Donaldson, on August 30, 1971, filed his First Amended Complaint. This complaint sought individual damages and renewed Donaldson's prayers for declaratory and injunctive relief to restrain the enforcement of Florida's civil commitment statutes unless Florida provided adequate treatment to its civilly committed mental patients. The complaint asked the district court to convene a three-judge district court to consider the plaintiff's attack on the constitutionality of the civil commitment statutes as they then operated. On November 30 however, the plaintiff in a memorandum brief abandoned the prayer that a three-judge

court be convened. The prayers for injunctive and declaratory relief therefore were effectively eliminated from the case.

The key allegation in the amended complaint charged that the defendants O'Connor and Walls had "acted in bad faith toward plaintiff and with intentional, malicious, and reckless disregard of his constitutional rights". The complaint alleged examples of such actions, including the denial to Donaldson of grounds privileges; the refusal of the psychiatrists to speak with him, even at his own request; refusal or obstruction of his opportunities for out-of-state discharge, despite a recommendation by a staff conference that he be given such a discharge, and despite the presentation of a signed parental consent to such a discharge. The core of the charge, however, was that Walls and O'Connor acted intentionally and maliciously in "confining Donaldson against his will, knowing that [he] was not physically dangerous to himself or others"; in confining him "knowing that [he] was not receiving adequate treatment, and knowing that absent such treatment the period of his hospitalization would be prolonged"; and that they "intentionally limit[ed] [his] 'treatment' program to 'custodial care' for the greater part of his hospitalization". Corresponding to these allegations, the complaint sought $100,000 damages against Walls and O'Connor.

The trial began November 21, 1972, and continued for four days. The jury returned a verdict awarding Donaldson $17,000 in compensatory damages and $5,000 in punitive damages against O'Connor, and $11,500 in compensatory damages and $5,000 in punitive damages against Gumanis. The jury returned verdicts in favor of the other three defendants. From the judgment entered on this verdict, Gumanis and O'Connor appeal.

The trial centered, of course, upon the conditions of Donaldson's confinement and upon the defendants' behavior toward Donaldson. On the record as a whole, there was ample

evidence to support the jury's reaching any or all of the conclusions set forth in the following subsections in Part I of this opinion.

A. *The defendants unjustifiably withheld from Donaldson specific forms of treatment.*

The evidence establishes that there were at least three forms of treatment the defendants withheld from Donaldson.

First, he was denied grounds privileges. Since the purpose of hospitalization is to restore the capacity for independent community living, one of the most basic modes of treatment is giving a patient an increasing degree of independence and personal responsibility. One of the plaintiff's expert witnesses was Dr. Walter Fox, Director of the Arizona Mental Health Department and former president of the Association of Medical Superintendents of Mental Hospitals. He had interviewed Donaldson and examined his hospital record. Fox testified that confining Donaldson to a locked building, with no opportunity for grounds privileges was not "consistent" with a treatment plan for a patient with Donaldson's history.

Gumanis denied Donaldson a privilege card, even after Donaldson had asked him for one. Fox testified that it would have been "standard psychiatric practice" to extend grounds privileges to a patient of Donaldson's background, condition, and history. Gumanis, in his testimony at trial, could not give a convincing explanation for his refusal of grounds privileges to Donaldson.[6] At one point he sought to shift the responsibility for the refusal to O'Connor's shoulders, saying that he recalled having denied privileges after consultation with O'Connor. Later, he testified that at the time in question Donaldson had appeared to him to be "really upset", and that

6. Donaldson testified that he had once escaped from the hospital. This occurred around Christmastime 1957, shortly before the end of the first year Donaldson had spent at Florida State. The hospital records, however, did not show that a fear Donaldson would attempt to escape again motivated the denial of grounds privileges; nor have Gumanis and O'Connor asserted before this Court that such a fear was their reason for denying Donaldson a card.

he had "probably" made the decision to deny Donaldson a privilege card on his own.

Donaldson testified that soon after his transfer to Department C, Dr. Hanenson, the physician in charge of that department, gave him a privilege card.

The second form of treatment denied Donaldson was occupational therapy. Donaldson testified that Gumanis consistently refused to allow him to enter occupational therapy. This testimony was borne out by a progress note entered in Donaldson's hospital record January 17, 1964. Again, Fox testified that given what he called Donaldson's "social history", Donaldson would have been ideally suited to benefit from occupational therapy. According to Donaldson, Gumanis did not want him to go into occupational therapy, because Gumanis feared that he would learn touch-typing and would use this skill, in Donaldson's words, to "write writs", that is, to prepare habeas corpus petitions. Gumanis gave no reason why he denied Donaldson occupational therapy, although in the course of his testimony he did allude to the fact that he had done so. Not until Donaldson was transferred to Dr. Hanenson's care was he allowed to enter occupational therapy.

Third, the simplest and most routine form of psychiatric treatment is to have a patient talk with a psychiatrist. Donaldson testified that in the eighteen months O'Connor was in direct charge of his case, he spoke with O'Connor "not more than six times", and that the total time he spent talking to O'Connor did not consume more than one hour. He testified that in the eight and one-half years he spent under Gumanis' care, he did not speak with Gumanis more than a total of two hours—an average of about fourteen minutes a year. He testified that neither Gumanis nor O'Connor ever heeded his requests to discuss his case. On one occasion Gumanis said that he "talked only to patients that he wanted to". Gumanis did not recall that conversation. Once again, there was evi-

dence to show that the situation improved when Donaldson was transferred to Dr. Hanenson's care. Donaldson testified that Hanenson managed to speak with him once a week, even though, according to Donaldson, patients were more numerous, psychiatrists fewer, and conditions worse in Hanenson's Department C than they had been in Gumanis' Department A.

B. *The defendants recklessly failed to attend to and treat Donaldson at precisely those junctures when treatment could have most helped Donaldson recover and therefore be released.*

The jury could have concluded that Donaldson should have been marked, at his entrance to the hospital, as a prime candidate for an early release, and that the defendants acted recklessly in failing to treat or attend to him during the early stage of his confinement. Fox testified that, given Donaldson's history,[7] he should have been "pegged" for an "early discharge". Moreover, a progress note entered by Gumanis after his first diagnostic interview with Donaldson, March 25, 1957, recorded that Donaldson "appeared" to be "in remission". Gumanis defined "remission" for the jury as a state "when the patient does not express delusions or paranoid ideas", and told the jury that it was hospital practice to release patients who were in remission. He testified that Donaldson was not released because he wanted to "observe [Donaldson] further". But after that interview the first progress note entered in Donaldson's hospital record is dated four months later; and the next report five months after that. Asked about this, Gumanis first replied, "When you have 900 patients you do that"; later, he insisted that he had seen Donaldson frequently, but had not recorded progress notes after each observation. The jury, however, could have discounted this testimony and concluded that Gumanis acted wantonly in giving a patient who had appeared to be "in remission" the same treatment he gave his 900 other patients.

7. Fourteen years before he was hospitalized in Florida, Donaldson had been hospitalized at the Marcy State Hospital in New York, with the same diagnosis as that made by the Florida doctors—"paranoid schizophrenic". On that occasion, Donaldson was released after three months.

C. *The defendants wantonly, maliciously, or oppressively blocked efforts by responsible and interested friends and organizations to have Donaldson released to their custody.*

At issue here are two efforts made to secure Donaldson's release, one by Helping Hands, Inc., a Minneapolis organization which runs halfway houses for mental patients and John H. Lembcke, a college friend of Donaldson.

1. *The Helping Hands' attempt to obtain Donaldson's release.*

Helping Hands made an inquiry to the hospital concerning the possibility of releasing Donaldson to its custody by a letter dated June 6, 1963:

> We are interested in the possibility of signing out your patient, Kenneth Donaldson, and taking him as a resident at our halfway house at 3800 Columbus Avenue, Minneapolis. A maximum of six people live here, including our house mother, and myself, as president. At this time we have a room for Kenneth, who has interested us very much through his letters.

Enclosed with the letter was a brochure describing Helping Hands and a letter from the Minneapolis Clinic of Psychiatry and Neurology, stating that "it would be impossible in any of our State Hospitals for a patient to receive the type of attention and care" provided at Helping Hands. The author of this letter pointed out that the woman identified by the letterhead as the founder and director of Helping Hands had "rehabilitated well over a thousand over the years". The letter requested information concerning Donaldson's age, health, and "qualifications for work".

The hospital responded June 17, 1973, in a letter signed by O'Connor, then Clinical Director of the hospital. It gave

Donaldson's age, and answered inquiries concerning his health and qualifications for work with the bare statement that Donaldson was "mentally incompetent at the present time." The crisp concluding paragraph read:

> Should he [Donaldson] be released from this Hospital, he will require very strict supervision, which he would not tolerate. Such a release would be to the parents. We see no prospects of his release to any third party at any time in the near future.

The jury could have decided that Gumanis and O'Connor acted wantonly and maliciously in issuing this response, and that this conduct foreclosed an opportunity for Donaldson to win back at least a part of his freedom, and to gain access to a level of psychiatric treatment unavailable to him at the Florida Hospital. Each of the defendants sought to shift the responsibility for sending this curt reply to the other's shoulders. They discussed the question in terms of whether hospital rules, in general, fixed responsibility for deciding whether a patient could be furloughed by the attending physician, or the Superintendent or Clinical Director; they did not discuss it in terms of their recollections of the particular event. The jury would have been justified in finding the two jointly responsible for the incident.

2. *The Lembcke attempt to obtain Donaldson's release.*

John H. Lembcke, a certified public accountant, in Binghamton, New York, who is married and has three children, had been a classmate of Donaldson's at Syracuse University in the 1920's. On four occasions, Lembcke sought to have Donaldson released to his custody. The first was on July 3, 1964, when Lembcke informed the hospital that Donaldson was a friend of his, and inquired whether there were "any conditions under which he would be released so that I could bring him back to New York State". The same day the hospital received the letter, O'Connor pencilled a note to Gumanis that is

attached to the letter in Donaldson's hospital record. The note said:

> This man must not be well himself to want to get involved with someone like this patient, who even the recent visiting psychologist considered *dangerous*—Recommend turn it down.

Rich, the new Clinical Director, wrote Lembcke saying that Donaldson had "shown no particular changes mentally", and that if released he would "require complete supervision".

The second inquiry came by letter of November 27, 1964. Again O'Connor appended a note to Gumanis that is in the hospital records. This note gave three reasons for denying Lembcke's request to have Donaldson released to him: parental consent would be required; the patient "would not stay with party mentioned"; and "we don't know anything about party". Gumanis prepared a letter, dated November 27 and again signed by Dr. Rich, "advis[ing]" Lembcke that Donaldson would "require further hospitalization". The reply did not mention the three reasons for the denial set out in O'Connor's note, and did not request any further information from Lembcke, even though Lembcke in his November 23 letter had offered to provide any information the hospital should request.

The third attempt by Lembcke began with another letter to the hospital, dated December 21, 1965. According to Lembcke's testimony, the hospital responded by saying Donaldson could be released on two conditions: (1) that Lembcke would give Donaldson "adequate supervision" so that the release would not be detrimental to his mental health; and (2) that Lembcke would secure parental permission for Donaldson to go to New York with Lembcke. In May 1966, Lembcke went to Florida, and met with Gumanis and O'Connor. While in Florida he saw Donaldson and obtained from Donaldson's parents a letter dated May 14, 1966, giving their consent to Donaldson's being released to him. Nothing happened. In his

testimony Lembcke did not explain how or why he came to abandon this 1966 effort to secure his friend's release.

Lembcke's final and most important effort to secure Donaldson's release began in March 1968. On March 21, the General Staff, at a meeting attended by Gumanis and Hanenson but not by O'Connor, recommended Donaldson's release on a trial visit or out-of-state discharge. On March 24, Lembcke wrote the hospital renewing his offer to take Donaldson. On March 28, the hospital responded, imposing three conditions on Donaldson's release: (1) that Lembcke be willing to come for Donaldson; (2) that he be willing to supervise Donaldson; and (3) that he be willing to take Donaldson to a psychiatrist if Donaldson needed treatment. By letter of March 31, Lembcke acceded to these conditions. On April 4, the hospital replied with a letter imposing two additional conditions: (1) a detailed statement concerning the home supervision Donaldson would be given; and (2) written authorization for the release from Donaldson's parents. Lembcke wrote back giving the hospital the information about home supervision it requested. The hospital replied by again saying it would be necessary to obtain the written consent of Donaldson's parents.

On September 18, 1968, Lembcke wrote the hospital, enclosing a photocopy of the notarized written permission Donaldson's parents had signed May 14, 1966. The hospital responded in a letter dated September 24, signed by Dr. Rich. The letter informed Lembcke that Donaldson had been mentally ill for many years, that he "still express[ed] delusional thinking" and that "it would not be fair to you or to him to release him from the hospital at this time without adequate planning". The letter added, in its final paragraph, that it would be necessary for the hospital to have more recent authorization from Donaldson's nearest relative than the one Lembcke had proffered. At that point, Lembcke gave up; whenever he met the conditions imposed by the hospital officials, new

conditions were imposed. As he put it, "after requirements were met, requirements were increased".

One other facet of Lembcke's last attempt to secure Donaldson's release bears mention. As noted, O'Connor did not attend the Staff Conference which had recommended Donaldson's release March 21. O'Connor first learned of the hospital's recommendation in June, when Donaldson wrote to the Division Director of the hospital concerning the effort being made to release him. The division director forwarded the letter to O'Connor, who in turn forwarded it to Hanenson, asking for information concerning the proposed release. Hanenson responded with a memorandum dated June 17. Across the bottom of this memorandum, O'Connor pencilled in the remark, "the record will show, I believe, we have been through this before and decided Mr. Lembcke would not properly supervise the patient". It was not clear when O'Connor supposed this "decision" to have been made, and in his deposition O'Connor was unable to locate any record of it in the hospital record. Moreover, there were suggestions in the record that Dr. O'Connor's conduct, in this and other respects, was influenced by his knowledge of Donaldson's history of writing letters to the press and to outside officials. From all of this evidence, the jury would have been justified in concluding that the frustration of Lembcke's effort to secure Donaldson's release in 1968 was entirely or primarily the result of O'Connor's bad faith intervention or, at the least, that the intervention was in reckless disregard of Donaldson's rights.

D. *The defendants continued to confine Donaldson knowing he was not dangerous, or with reckless disregard for whether he was dangerous.*

Three of the plaintiff's expert witnesses—Fox, Raymond D. Flowler, Jr., Chairman of the Psychology Department at the University of Alabama and former President of both the Alabama and Southern Psychological Associations, and Julian Davis, Director of the Psychology Department at the Florida State Hospital—testified that they did not believe Donaldson

was dangerous. Fox's and Flowler's opinions were based upon readings of the hospital records, Donaldson's psychological reports, Donaldson's past history, and raw data from his psychological examination. Lembcke testified that in his half century of having known Donaldson, he had never known Donaldson to be "violent", "aggressive", or "belligerent"; that, on the contrary, he knew Donaldson to be a "gentle" man. Dr. Walls testified that he did not believe Donaldson was physically dangerous; Gumanis himself conceded that he did not think Donaldson dangerous while Donaldson was in the hospital, although he said he could not predict what Donaldson would be like outside the hospital. There was no evidence in the record of Donaldson's ever having been violent in any way.

On the basis of this testimony the jury would have been justified in finding that Donaldson was not dangerous, and in inferring that the defendants knew him to be so.

E. *The defendants did not do the best they could with available resources.*

As they did in the district court, the defendants on appeal pitch their defense in substantial part on their contention that they did the best they could with limited resources available to the state psychiatric hospital. Donaldson rebuts this contention, first, by pointing out the contrast between the treatment he received from the defendants and that he received from Hanenson. Hanenson allowed him grounds privileges and occupational therapy, spoke with him frequently, and within a year of taking charge of his case arranged a staff conference that recommended his release. Second, he relies on the testimony of Fox and the other experts to the effect that Gumanis and O'Connor failed to take steps that would have been open to them to take, even given the admittedly stark limitations on the resources available to them. We agree that these two considerations were a sufficient basis for the jury to reject the defendants' defense that they did the best they could with available resources.

We turn now to the novel and important question whether civilly committed mental patients have a constitutional right to treatment.

II.

[1] The theory of Donaldson's cause of action under section 1983 was set forth in three of the instructions given by the trial judge. The first, instruction number 34, was a variation of a standard form "boiler plate" instruction found in 2 Dewitt & Blackmer's Federal Jury Practice & Instructions, 1970, § 87.05 (2d ed.) This instruction stated that there were four basic elements Donaldson had to prove to make out a claim under § 1983: (1) that the defendants "confined plaintiff against his will, knowing that he was not mentally ill or dangerous, and knowing that if mentally ill he was not receiving treatment for his mental illness"; (2) that defendants "then and there acted under the color of state law"; (3) that defendants' "acts and conduct deprived the plaintiff of his federal constitutional right not to be denied his liberty without due process of law as that phrase is defined and explained in these instructions"; and (4) that the defendants' "acts and conduct were the proximate cause of injury and consequent damage to the plaintiff". The other two instructions, 37 and 38, were the relevant instructions "defin[ing] and explain[ing]" the "phrase", "federal constitutional right not to be denied or deprived of his liberty without due process of law", within the meaning of instruction 34. These instructions told the jury:

37. You are instructed that a person who is involuntarily civilly committed to a mental hospital does have a constitutional right to receive such individual treatment as will give him a realistic opportunity to be cured or to improve his mental condition.

38. The purpose of involuntary hospitalization is treatment and not mere custodial care or punishment if a patient is not dangerous to himself or others. Without such

> treatment there is no justification, from a constitutional standpoint, for continued confinement.

The propriety of these two instructions is the heart of the question raised by both O'Connor and Gumanis in their appeals.[8]

[2] The question for decision, whether patients involuntarily civilly committed in state mental hospitals have a constitutional right to treatment, has never been addressed by any of the federal courts of appeals. Three district courts, however, have decided the question within the last three years, two of which held that there is a constitutional right to treatment.[9]

8. As a threshold matter, Donaldson suggests that the objections to these instructions are not properly before this Court. He notes that the defendants did not object to that instruction either when the proposed instructions were discussed in chambers, or after the charge was read to the jury. The defendants did, however, object to what were then the plaintiff's proposed instructions 37 and 38 in a pretrial brief filed before the Court. There they asked that those instructions be replaced with an instruction that "[y]ou are instructed that a person who is committed to a mental hospital has a right to be released through judicial process when through no fault of his own treatment is not afforded and he is not dangerous to society or to himself". The trial judge refused this request, and gave the two instructions as the plaintiffs had proposed them. It is settled that "a failure to object may be disregarded if a party's position has previously been made clear to the court and it is plain that a further objection would be unavailing". 9 C. Wright & A. Miller, Federal Practice & Procedure § 2553 at 639-40; see, *e. g.*, Mays v. Dealers Transit, 7 Cir. 1971, 441 F.2d 1344; Steinhauser v. Hertz Corp., 2 Cir. 1970, 421 F.2d 1169. We find that was the case here, and therefore we consider that the objections are properly before the Court.

9. Two cases hold that there is a right to treatment for civilly committed mentally ill patients. Wyatt v. Stickney, M.D.Ala.1971, 325 F.Supp. 781, *on submission of proposed standards by defendants*, 334 F.Supp. 1341, enforced, 1972, 344 F.Supp. 373, 387, appeal docketed sub nom., Wyatt v. Aderholt, No. 72-2634, 5 Cir. Aug. 1, 1972; Stachulak v. Coughlin, N.D.Ill., 1973, 364 F.Supp. 686. One has held civilly committed mentally ill patients enjoy no right to treatment. Burnham v. Department of Public Health, N.D.Ga.1972, 349 F.Supp. 1335, appeal docketed, No. 72-3110, 5 Cir., Oct. 4, 1972.
A fourth case has recently held that civilly committed mentally retarded patients have a right to treatment. Welsch v. Likins, No. 4-72-Civ. 451, D.Minn. Feb. 15, 1974, — F.Supp. —.

The Court of Appeals for the District of Columbia Circuit, in a case decided eight years ago, took note in dictum of the existence and seriousness of the question, although in the same case the court held that the Hospitalization of the Mentally Ill Act of 1964[10] creates a *statutory* right to treatment on the part of mental patients in the District of Columbia.[11] The idea of a constitutional right to treatment has received an unusual amount of scholarly discussion and support,[12] and there is now an enormous range of precedent

10. D.C.Code Ann. § 21-501.

11. Rouse v. Cameron, 1966, 125 U.S.App.D.C. 366, 373 F.2d 451. Chief Judge Bazelon wrote for the Court:

> Absence of treatment "might draw into question 'the constitutionality of [this] mandatory commitment section' as applied." (1) Lack of improvement raises a question of procedural due process where the commitment is under D.C.Code § 24-301 rather than under the civil commitment statute, for under § 24-301 commitment is summary, in contrast with civil commitment safeguards. It does not rest on any finding of present insanity and dangerousness but, on the contrary, on a jury's reasonable doubt that the defendant was sane when he committed the act charged. Commitment on this basis is permissible because of its humane therapeutic goals. (2) Had appellant been found criminally responsible, he could have been confined a year, at most, however dangerous he might have been. He has been confined four years and the end is not in sight. Since this difference rests only on need for treatment, a failure to supply treatment may raise a question of due process of law. It has also been suggested that a failure to supply treatment may violate the equal protection clause. (3) Indefinite commitment without treatment of one who has been found not criminally responsible may be so inhumane as to be "cruel and unusual punishment." [Footnotes and citations omitted]

Id. at 453.

12. The landmark article in the field is Birnbaum, The Right to Treatment, 1960, 46 A.B.A. Journal 499. Much of the commentary in the area was stimulated by the *Rouse* decision. *E. g.*, Symposium—The Right to Treatment, 1969, 57 Geo.L.J. 673 (11 articles, 218 pages); Bazelon, Implementing the Right to Treatment, 1969, 36 U.Chi.L.Rev. 742; Birnbaum, Some Remarks on "The Right to Treatment," 1971, 23 Ala.L.Rev. 623; Chambers, Alternatives to Civil Commitment of the Mentally Ill: Practical Guides and Constitutional Imperatives, 1969, 70 Mich.L.Rev. 1108; Katz, The Right to Treatment—An Enchanting Legal Fiction? 1969, U.Chi.L.Rev. 755; Drake, Enforcing the Right to Treatment: Wyatt v. Stickney, 1972, 10 Am.Crim.L.Rev. 587; Morris, "Criminality" and the Right to

relevant to, although not squarely in point with, the issue.[13] The idea has been current at least since 1960, since the publication in the May 1960 issue of the American Bar Association Journal of an article by Dr. Morton Birnbaum, a forensic medical doctor now generally credited with being the father of the idea of a right to treatment.[14] The A.B.A. Journal editorially endorsed the idea shortly after the publication of Dr. Birnbaum's article.[15]

We hold that a person involuntarily civilly committed to a state mental hospital has a constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition.

In reaching this result, we begin by noting the indisputable fact that civil commitment entails a "massive curtailment of liberty" in the constitutional sense. Humphrey v. Cady, 1972, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394. The destruction of an individual's personal freedoms effected by civil commitment is scarcely less total than that effected by confinement in a penitentiary. Indeed, civil commitment, because it is for an indefinite term, may in some ways involve a more serious abridgement of personal freedom than imprisonment for commission of a crime usually does. Civil commitment involves stigmatizing the affected individuals, and the stigma attached, though in theory less severe than the stigma attached to criminal conviction, may in reality be as severe, or more so.[16] Since civil commitment involves deprivations of

Treatment, 1969, U.Chi.L.Rev. 784; Note, The Nascent Right to Treatment, 1967, 53 Va.L.Rev. 1134; Note, Civil Restraint, Mental Illness, and the Right to Treatment, 1967, 77 Yale L.J. 87; 80 Harv.L.Rev. 898 (1967).

13. See cases cited at nn. 23–44 *infra*.

14. Birnbaum, The Right to Treatment, 1960, 46 A.B.A.J. 499.

15. Editorial, A New Right, 1960, 46 A.B.A.J. 516.

16. On the recognition that stigmatization constitutes a deprivation of liberty in the constitutional sense, see Board of Regents v. Roth, 1972, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548, 558–559.

liberty of the kind with which the due process clause is frequently concerned, that clause has the major role in regulating government actions in this area.

Beyond this, the conclusion that the due process clause guarantees a right to treatment rests upon a two-part theory. The first part begins with the fundamental, and all but universally accepted, proposition that "any nontrivial governmental abridgement of [any] freedom [which is part of the 'liberty' the Fourteenth Amendment says shall not be denied without due process of law] must be justified in terms of some 'permissible governmental goal.'" Tribe, Foreword—Toward a Model of Roles in the Due Process of Life and Law, 86 Harv.L.Rev. 1, 17 (1973). Once this "fairly sweeping concept of substantive due process" is assumed, *id.* at 5 n. 26,[17] the next step is to ask precisely what government interests justify the massive abridgement of liberty civil commitment entails. Typically, three distinct grounds for civil commitment are recognized by state statutes: danger to self; danger to others; and need for treatment, or for "care", "custody", or "supervision". Jackson v. Indiana, 1972, 406 U.S. 715, 737, 92 S.Ct. 1845, 32 L.Ed.2d 435; see Note, Civil Commitment of the Mentally Ill: Theories and Procedures, 1966, 79 Harv.L.Rev. 1288, 1289–97; Note, 1967, The Nascent Right to Treatment, 53 Va.L.Rev. 1134, 1138–39.[18] It is analytically useful to conceive of these grounds as falling into two categories; one a

17. *See also* Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 1973, 82 Yale L.J. 920, 935 & n. 91; Roe v. Wade, 1973, 410 U.S. 113, 172–173, 93 S.Ct. 705, 35 L.Ed.2d 147 (Rehnquist, J., dissenting); Doe v. Bolton, 1973, 410 U.S. 179, 223, 93 S.Ct. 739, 35 L.Ed.2d 201 (White, J., dissenting).

18. In *Jackson*, the Supreme Court, relying upon an American Bar Foundation study, found that in nine states the sole criterion for involuntary commitment was the danger to self or others; that in 18 other states the patient's need for care or treatment was an alternative basis; that the need for care or treatment was the sole basis in six other states; and a few states had no statutory criteria at all and "presumably le[ft] the determination to judicial discretion". 406 U.S. at 737 n. 19, citing American Bar Foundation, The Mentally Disabled and the Law (rev. ed. 1971) at 36–49.

"police power" rationale for confinement, the other a "*parens patriae*" rationale.[19] Danger to others is a "police power" rationale; need for care or treatment a "*parens patriae*" rationale. Danger to self combines elements of both.

The key point of the first part of the theory of a due process right to treatment is that where, as in Donaldson's case, the rationale for confinement is the "*parens patriae*" rationale that the patient is in need of treatment, the due process clause requires that minimally adequate treatment be in fact provided. This in turn requires that, at least for the nondangerous patient, constitutionally minimum standards of treatment be established and enforced. As Judge Johnson expressed in the *Wyatt* case: "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process." Wyatt v. Stickney, *supra*, 325 F.Supp. at 785. Or as Justice Cutter, speaking for the Supreme Judicial Court of Massachusetts, put it: "Confinement of mentally ill persons, not found guilty of crime, without affording them reasonable treatment also raises serious questions of deprivation of liberty without due process of law. As we said in the *Page* case [citation omitted], of a statute permitting comparable confinement, 'to be sustained as a nonpenal statute . . . it is necessary that the remedial aspect of confinement . . . have foundation in fact.'" Nason v. Superintendent, Bridgewater Hospital, 1968, 353 Mass. 604, 612, 233 N.E.2d 908, 913. This key step in the theory also draws considerable support from, if indeed it is not compelled by, the Supreme Court's recent decision in Jackson v. Indiana, 1972, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435. In *Jackson*, the Supreme Court established the rule that "[a]t the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purposes for which the individual is

19. See Note, The Nascent Right to Treatment, 1967, 53 Va.L.Rev. 1134, 1138–39.

committed". 406 U.S. at 738.[20] If the "purpose" of commitment is treatment, and treatment is not provided, then the "nature" of the commitment bears no "reasonable relation" to its "purpose", and the constitutional rule of *Jackson* is violated.

[3, 4] This much represents the first part of the theory of a due process right to treatment; persons committed under what we have termed a *parens patriae* ground for commitment must be given treatment lest the involuntary commitment amount to an arbitrary exercise of government power proscribed by the due process clause. The second part of the theory draws no distinctions between persons committed under "*parens patriae*" rationales and those committed under "police power" rationales. This part begins with the recognition that, under our system of justice, long-term detention is, as a matter of due process, generally permitted only when an individual is (1) proved, in a proceeding subject to the rigorous constitutional limitations of the due process clause of the fourteenth amendment and the Bill of Rights, (2) to have committed a *specific act* defined as an offense against the state. See Powell v. Texas, 1968, 392 U.S. 514, 533, 542–543, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (Black, J., concurring). Moreover, detention, under the criminal process, is usually allowed only for a period of time explicitly fixed by the prisoner's

20. *Jackson* involved a mentally defective deaf mute who was committed after the court determined that he was incompetent to stand trial. Since the mental and physical defects which were the cause of his inability were not susceptible to treatment and not likely to improve during his confinement, it was unlikely that he would ever become competent to stand trial. In the circumstances, the Supreme Court held that its rule that "the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed" permitted the state to confine Jackson under the provisions for the commitment of those found incompetent to stand trial only for "the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity [to stand trial] in the foreseeable future". It held further that even if it were determined that he was likely to become able to stand trial, "his continued commitment [would have to be] justified by progress toward that goal". 406 U.S. at 738.

sentence. The second part of the theory of a due process right to treatment is based on the principle that when the three central limitations on the government's power to detain—that detention be in retribution for a specific offense; that it be limited to a fixed term; and that it be permitted after a proceeding where fundamental procedural safeguards are observed—are absent, there must be a *quid pro quo* extended by the government to justify confinement.[21] And the *quid pro quo* most commonly recognized is the provision of rehabilitative treatment, or, where rehabilitation is impossible, minimally adequate habilitation and care, beyond the subsistence level custodial care that would be provided in a penitentiary.[22]

21. One theory is that commitment pursuant to civil statutes generally lacks the procedural safeguards afforded those charged with criminal offense. The constitutional justification for this abridgment of *procedural rights* is that the purpose of commitment is treatment. (Emphasis supplied).

Welsch v. Likins, No. 4-72-Civ. 451, D.Minn., Feb. 15, 1974, — F.Supp. — at —. *See also* Inmates of Boys' Training School v. Affleck, D.R.I.1972, 346 F.Supp. 1354, 1368; Rouse v. Cameron, 1966, 125 U.S.App.D.C. 366, 373 F.2d 451, 453 (Bazelon, C. J.); Note, Civil Restraint, Mental Illness, and the Right to Treatment, 1967, 77 Yale L.J. 87, 90-91, 102-03 & nn. 62-63.

22. Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offense."

Wyatt v. Stickney, M.D.Ala.1971, 325 F.Supp. 781, 784, quoting Ragsdale v. Overholser, 1960, 108 U.S.App.D.C. 308, 281 F.2d 943, 950 (Fahy, J., concurring). *See also* cases cited in nn. 23 24 *infra*.

Of the various formulations of this "*quid pro quo*" theory we have found, perhaps the most successful is that made by Professor Nicholas Kittrie, writing specifically about confinement of juveniles, but articulating a theory equally applicable to civil commitment of mentally ill persons:

> Our society has increasingly divested certain groups from the traditional criminal justice court and, acting under its asserted role of *parens patriae*, substituted new therapeutic controls.
>
> • • • • • • • • • •
>
> A new concept of substantive due process is evolving in [this] therapeutic realm. This concept is founded upon a recognition of the concurrency between the state's exercise of sanctioning powers and its assumption of the duties of social responsibility. Its implication is that effective treatment must be the *quid pro quo* for society's right to exercise its *parens patriae* controls. Whether specifically recognized by statutory enactment or implicitly derived from the constitutional requirements of due process, the right to treatment exists.

Kittrie, Can the Right to Treatment Remedy the Ills of the Juvenile Process? 1969, 57 Geo.L.J. 851-52, 870.

This second part of the theory draws a wide range of support from a variety of precedents. The relevant cases have arisen in five major procedural contexts.

The earliest group of relevant cases consists of cases decided on habeas corpus petitions brought by citizens held under provisions for various kinds of "nonpenal" confinement, who were being held in correctional facilities for prisoners convicted of crimes. These cases uniformly held that, where detention is "nonpenal" in theory, the very least that is required is that the persons be confined in a facility other than a prison.[23]

Later cases expand the view of these cases by holding not only that persons held under provisions for "nonpenal" confinement be held elsewhere than in a prison, but that they must be held in places where the conditions are *actually* therapeutic.[24]

The third line of relevant cases are those where the constitutionality of various modern "nonpenal" statutes—notably sex-offender and defective-delinquent statutes—provide for the confinement of habitual criminal offenders to protect

23. Benton v. Reid, 1956, 98 U.S.App.D.C. 27, 231 F.2d 780; Commonwealth v. Page, 1958, 339 Mass. 313, 159 N.E.2d 82; In re Maddox, 1958, 351 Mich. 358, 88 N.W.2d 470; *cf.* Miller v. Overholser, 1953, 92 U.S.App.D.C. 110, 206 F.2d 415.

24. But this mandatory commitment provision rests upon a supposition, namely, the necessity for treatment of the mental condition which led to the acquittal by reason of insanity. And this necessity for treatment presupposes in turn that treatment will be accorded.

Ragsdale v. Overholser, 1960, 108 U.S.App.D.C. 308, 281 F.2d 943, 950 (Fahy, J., concurring), quoted with approval, Darnell v. Cameron, 1965, 121 U.S.App.D.C. 58, 348 F.2d 64, 67-68, (Bazelon, C. J.); Sas v. Maryland, 4 Cir. 1964, 334 F.2d 506, 517, cert. dismissed as improvidently granted sub nom., Murel v. Baltimore City Crim. Ct., 1972, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791; Commonwealth v. Page, 1959, 339 Mass. 313, 317, 159 N.E.2d 82, 85.

society and to provide rehabilitative care. The decisions have upheld such statutes, but the courts have usually added the proviso that the constitutionality of the statute is conditioned upon the *realization* of the statutory promise of rehabilitative treatment.[25]

The fourth set of cases, highlighted by Rouse v. Cameron [26] and Nason v. Superintendent of Bridgewater State Hospital,[27] consists of cases where individuals under confinement have brought habeas corpus petitions challenging their confinement on the ground that they were not receiving treatment. This is a diverse group of cases; in most of them, the challenge to confinement for lack of treatment has been combined with challenges brought on other grounds, and often the other grounds are the subject of the decisions. Among these cases,

25. For those in the category [of defective delinquents] it [the defective delinquents statute] would substitute psychiatric treatment for punishment in the conventional sense and would free them from confinement, not when they have "paid their debt to society," but when they have been sufficiently cured to make it reasonably safe to release them. With this humanitarian and progressive approach to the problem no person who has deplored the inadequacies of conventional penological practices can complain. But a statute though "fair on its face and impartial in appearance" may be fraught with the possibility of abuse in that if not administered in the spirit in which it is conceived it can become a mere device for warehousing the obnoxious and antisocial elements of society. . . . *Deficiencies in staff, facilities, and finances would undermine the efficacy of the Institution and the justification for the law, and ultimately the constitutionality of its application.* [Footnotes omitted]
Sas v. Maryland, 4 Cir. 1964, 334 F.2d 506, 517, cert. dismissed as improvidently granted sub nom. Murel v. Baltimore City Crim. Ct., 1972, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791 (emphasis supplied). *See also* Davy v. Sullivan, M.D.Ala.1973, 354 F.Supp. 1320, (sex offender statute) (three-judge court).

26. 1966, 125 U.S.App.D.C. 366, 373 F.2d 451 (Bazelon, C. J.) The District of Columbia Circuit has reaffirmed its *Rouse* holding on numerous occasions. See, *e. g.*, In re Curry, 1971, 147 U.S.App.D.C. 28, 452 F.2d 1360; Covington v. Harris, 1969, 136 U.S.App.D.C. 35, 419 F.2d 617; Tribby v. Cameron, 1967, 126 U.S.App.D.C. 327, 379 F.2d 104; Dobson v. Cameron, 127 U.S.App.D.C. 324, 383 F.2d 519; Millard v. Cameron, 1966, 125 U.S.App.D.C. 383, 373 F.2d 468.

27. 353 Mass. 604, 233 N.E.2d 908 (1968) (Cutter, J.).

however, we have found none where any court has declared that no right to treatment exists, and we have found none explicitly recognizing a *constitutional* right to treatment. When they hold that there is a right to treatment, the cases usually either rest on statutory grounds, or are ambiguous as to whether they are resting upon statutory or constitutional grounds.[28] But in all cases, the courts have at least sustained the right of a petitioner to a hearing to develop the facts supporting his claim that he is not receiving treatment.[29]

Fifth, and last, among the groups of cases is the spate of recent cases brought as class actions in federal court, seeking broad forms of injunctive and declaratory relief requiring that adequate treatment be provided in state-run facilities. The cases have included attacks on conditions in many types of facilities—including facilities for the mentally ill,[30] the mentally retarded,[31] juvenile delinquents [32] or nondelinquent juveniles held as being "persons in need of supervision".[33]

28. *But see* Stachulak v. Coughlin, N.D.Ill.1973, 364 F.Supp. 686, a case of this kind, citing *Wyatt* and holding there is a constitutional right to treatment.

29. *E. g.*, Humphrey v. Cady, 1972, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (characterizing committed sex offender's claim that he was not receiving treatment a "substantial constitutional claim", and remanding for a hearing on, inter alia, that issue).

30. See cases cited in note 9 *supra*.

31. Wyatt v. Stickney, M.D.Ala.1972, 344 F.Supp. 387; Welsch v. Likins, No. 4-72-Civ. 451, D.Minn. Feb. 15, 1974, — F.Supp. —. *Contra*, New York State Ass'n for Retarded Children, Inc. v. Rockefeller, E.D.N.Y.1973, 357 F.Supp. 752.

32. Nelson v. Heyne, 7 Cir. 1974, 491 F.2d 352, aff'g N.D.Ind.1972, 355 F.Supp. 451; Inmates of Boys' Training School v. Affleck, D.R.I.1972, 346 F.Supp. 1354; Morales v. Turman, E.D.Tex.1973, 364 F.Supp. 166.

33. Martarella v. Kelley, S.D.N.Y.1972, 349 F.Supp. 575, enforced, 359 F.Supp. 478.
The closest the Supreme Court has come to speaking directly on the second, more important part of the due process right to treatment theory we articulate, came in In re Gault, 1967, 387 U.S. 1, 22

Taken together, these five sets of cases constitute a near unanimous recognition that governments must afford a *quid pro quo* when they confine citizens in circumstances where the conventional limitations of the criminal process are inapplicable. These five groups include cases decided by all levels of courts—the Supreme Court,[34] the courts of appeals,[35] the federal district courts,[36] and the state courts.[37] One or another of them concerns each of the major forms of "nonpenal confinement: from those with a heavy police power emphasis, such as

n. 30, 87 S.Ct. 1428, 18 L.Ed.2d 527, in which the Court, discussing the context of juvenile confinement, wrote:

> While we are concerned only with procedure before the juvenile court in this case, it should be noted that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a *quid pro quo* . . . . The high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles . . . .
>
> In fact some courts have recently indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment.

34. Jackson v. Indiana, 1972, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435; Humphrey v. Cady, 1972, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394; McNeil v. Director, Patuxent Institution, 1972, 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed.2d 719.

35. *E. g.*, Nelson v. Heyne, *supra* note 39; Sas v. Maryland, 4 Cir. 1964, 334 F.2d 506, *cert. dismissed as improvidently granted* sub nom., Murel v. Baltimore City Crim. Ct., 1972, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791; Rouse v. Cameron, 1966, 125 U.S.App.D.C. 366, 373 F.2d 541.

36. *E. g.*, cases cited in nn. 9, 31–33, *supra*.

37. *E. g.*, Nason v. Superintendent, Bridgewater Hospital, 1968, 353 Mass. 604, 233 N.E.2d 908; Commonwealth v. Page, 1959, 339 Mass. 313, 159 N.E.2d 82; In re Maddox, 1958, 351 Mich. 358, 88 N.W.2d 470.

confinement of sex offenders[38] or defective delinquents,[39] of persons acquitted by reason of insanity,[40] or of persons held incompetent to stand trial;[41] those with a heavy *parens patriae* emphasis, such as confinement of the mentally retarded,[42] or of juveniles;[43] and those—such as civil commitment of the mentally ill[44]—with elements of both rationales behind them.

The appellants argue strenuously that a right to constitutionally adequate treatment should not be recognized, because such a right cannot be governed by judicially manageable or ascertainable standards. In making the argument, they rely heavily upon the Northern District of Georgia's decision in Burnham v. Department of Public Health, 1972, 349 F.Supp. 1335, 1341–1343. In *Burnham*, the district judge held that a class action seeking declaratory and injunctive relief requiring the Georgia Department of Public Health to provide treatment at Georgia mental hospitals presented a nonjusticiable controversy. He quoted Baker v. Carr, 1962, 369 U.S. 186,

38. *E. g.*, Humphrey v. Cady, 1972, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394; Davy v. Sullivan, M.D.Ala.1973, 354 F.Supp. 1320 (three-judge court); Commonwealth v. Page, 1959, 339 Mass. 313, 159 N.E.2d 82.

39. *E. g.*, Sas v. Maryland, 4 Cir. 1964, 334 F.2d 506, cert. dismissed as improvidently granted sub nom., Murel v. Baltimore City Crim. Ct., 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791.

40. *E. g.*, Rouse v. Cameron, 1966, 125 U.S.App.D.C. 366, 373 F.2d 451 (Bazelon, C. J.); Darnell v. Cameron, 1965, 121 U.S.App.D.C. 58, 348 F.2d 64 (Bazelon, C. J.); Ragsdale v. Overholser, 1960, 108 U.S.App.D.C. 308, 281 F.2d 943 (Burger, J.).

41. Jackson v. Indiana, 1972, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435. *See also* Greenwood v. United States, 1956, 350 U.S. 366, 76 S.Ct. 410, 100 L.Ed. 412; United States v. Pardue, D.Conn.1973, 354 F.Supp. 1377; United States v. Jackson, N.D.Cal.1969, 306 F.Supp. 4.

42. *E. g.*, Wyatt v. Stickney, M.D.Ala.1972, 344 F.Supp. 387; Welsch v. Likins, No. 4-72-Civ. 451, D.Minn. Feb. 15, 1974, noted, 42 U.S.L.W. 1141–42.

43. Cases cited in notes 32–33.

44. Cases cited in note 9 *supra*.

198, 82 S.Ct. 691, 700, 7 L.Ed.2d 663, for the proposition that determining whether a suit was justiciable requires determining whether "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded". 349 F.Supp. at 1341, quoting 369 U.S. at 198. He then cited the ambiguity of the dictionary definition of treatment, a passage from a law review article noting the fact that there are as many as forty different methods of psychotherapy,[45] and a passage from the Supreme Court's decision in Greenwood v. United States, 1956, 350 U.S. 366, 76 S.Ct. 410, 100 L.Ed. 412, concerning the "tentativeness" and "uncertainty" of "professional judgment" in the mental health field.[46] He concluded: "[T]he claimed duty (i. e. to 'adequately' or 'constitutionally treat') defies judicial identity and therefore prohibits its breach from being judicially defined." 349 F.Supp. at 1342.

The defendants' argument can be answered on two levels. First, we doubt whether, even if we were to concede that courts are incapable of formulating standards of adequate

45. Levine [M. Levine, Psychotherapy in Medical Practice] lists 40 methods of psychotherapy. Among these, he includes physical treatment, medicinal treatment, reassurance, authoritative firmness, hospitalization, ignoring of certain symptoms and attitudes, satisfaction of neurotic needs and bibliotherapy. In addition, there are physical methods of psychiatric therapy, such as the prescription of sedatives and tranquilizers, the induction of convulsions by drugs and electricity, and brain surgery. *Obviously, the term "psychiatric treatment" covers everything that may be done under medical auspices—and more.*

If mental treatment is all the things Levine and others tell us it is, how are we to determine whether or not patients in mental hospitals receive adequate amounts of it?

Szasz, The Right to Psychiatric Treatment: Rhetoric and Reality, 1969, 57 Geo.L.J. 740, 741.

46. . . . [T]heir [two court-appointed psychiatrists] testimony illustrates the uncertainty of diagnosis in this field and the tentativeness of professional judgment. The only certain thing that can be said about the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment.

Greenwood v. United States, 1956, 350 U.S. 366, 375, 76 S.Ct. 410, 415, 100 L.Ed. 412.

treatment in the abstract, that we could or should for that reason alone hold that no right to treatment can be recognized or enforced. There will be cases—and the case at bar is one—where it will be possible to make determination whether a given individual has been denied his right to treatment without formulating in the abstract what constitutes "adequate" treatment. In this case, the jury properly could have concluded that Donaldson had been denied his rights simply by comparing the treatment he received while he was under Gumanis's and O'Connor's care with that he received while under Hanenson's care; or it could have concluded that Donaldson's rights had been violated on the basis of the evidence that the defendants obstructed his release even though they knew he was receiving no treatment. Neither judgment required any *a priori* determination of what constitutes or would have constituted adequate treatment, and of course no such determination was made.

We do not, however, concede that determining what constitutes adequate treatment is beyond the competence of the judiciary. In deciding in individual cases whether treatment is adequate, there are a number of devices open to the courts, as Judge Bazelon noted in discussing the implementation of the statutory right to treatment in the landmark case of Rouse v. Cameron:

> But lack of finality [of professional judgment] cannot relieve the court of its duty to render an informed decision. Counsel for the patient and the government can be helpful in presenting pertinent data concerning standards for mental care, and, particularly when the patient is indigent and cannot present experts of his own, the court may appoint independent experts. Assistance might be obtained from such sources as the American Psychiatric Association, which has published standards and is continually engaged in studying the problems of mental care. The court could also consider inviting the psychiatric and legal communities to

establish procedures by which expert assistance can be best provided. [Footnotes omitted].

373 F.2d at 457. There are by now many cases where courts have undertaken to determine whether treatment in an individual case is adequate or have ordered that determination to be made by a trial court.[47] Even in cases like *Wyatt* and *Burnham*, when courts are asked to undertake the more difficult task of fashioning institution-wide standards of adequacy, the task should not be beyond them. The experience of the *Wyatt* case bears this out. In *Wyatt*, agreement was reached among the parties on almost all of the minimum standards for adequate treatment ordered by the district court, and the defendants joined in submitting the standards to the district court. These stipulated standards were supported and supplemented by testimony from numerous expert witnesses. Moreover, there was a striking degree of consensus among the experts, including the experts presented by the defendants, as to the minimum standards for adequate treatment. The standards developed have not been challenged by the defendants in the appeal now pending before this Court. See Wyatt v. Stickney, M.D.Ala.1972, 344 F.Supp. 373, 375–376.

In summary, we hold that where a nondangerous patient is involuntarily civilly committed to a state mental hospital, the only constitutionally permissible purpose of confinement is to

47. See, *e. g.*, Humphrey v. Cady, 1972, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394; In re Curry, 1971, 147 U.S.App.D.C. 28, 452 F.2d 1360; United States v. Waters, 1970, 141 U.S.App.D.C. 289, 437 F.2d 722; Dobson v. Cameron, 1967, 127 U.S.App.D.C. 324, 383 F.2d 519; Tribby v. Cameron, 126 U.S.App.D.C. 327, 379 F.2d 104; Millard v. Cameron, 1966, 125 U.S.App.D.C. 383, 373 F.2d 468; Sas v. Maryland, 4 Cir. 1964, 334 F.2d 506, remanding, D.Md., 1969, 295 F.Supp. 389, aff'd sub nom., Tippett v. Maryland, 1971, 436 F.2d 1153, cert. dismissed as improvidently granted sub nom., Murel v. Baltimore City Crim. Ct., 1972, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791; Dixon v. Atty. Gen'l of Pennsylvania, M.D.Pa.1971, 325 F.Supp. 966 (three-judge); In re Jones, D.D.C.1972, 338 F.Supp. 428; Clatterbuck v. Harris, D.D.C.1968, 295 F.Supp. 84; Nason v. Supt. of Bridgewater State Hospital, 1968, 353 Mass. 604, 233 N.E.2d 908.

provide treatment, and that such a patient has a constitutional right to such treatment as will help him to be cured or to improve his mental condition. We hold that the district court did not err in so instructing the jury.

III.

[5] Gumanis and O'Connor join in contending that the evidence at trial did not permit the jury to find that they acted in bad faith, and that therefore they cannot be held personally liable for Donaldson's injuries or the deprivations of his constitutional rights. Gumanis's arguments concern primarily his role in deciding whether Donaldson could or should be released. He asserts that he acted throughout in good faith and in the reasonable belief that Donaldson was mentally ill and required further confinement. O'Connor's argument is directed not only toward his acts affecting the decision whether to release, but also to the entirety of his conduct while Donaldson was held at Florida State. O'Connor argues that both he and Gumanis did the best they could with available resources, and therefore should not be held personally liable for whatever was done to Donaldson. He cites in his brief the various limitations of staff and funds available to the state psychiatrists at Florida State, the difficulties hospital administrators have had in winning approval of their budgets from the state legislatures, and similar matters; and he argues, on that basis, that the denial of whatever right to treatment Donaldson had was the product of the actions of the legislature and of the realities of the budgetary situation, and not of the actions of the state psychiatrists to whose care Donaldson was entrusted.

We find the appellants' objection, in all of its various forms, without merit.

The trial judge instructed the jury:

> The defendants in this action rely on the defense that they acted in good faith. Simply put, defendants contend they in good faith believed it was necessary to detain

plaintiff in the Florida State Hospital for treatment for the length of time he was so confined. If the jury should believe from a preponderance of the evidence that defendants reasonably believed in good faith the detention of plaintiff was proper for the length of time he was confined then a verdict for defendants should be entered even though the jury may find the detention to have been unlawful.

However, mere good intentions which do not give rise to a reasonable belief that detention is lawfully required cannot justify plaintiff's confinement in the Florida State Hospital. As a corollary plaintiff here need not show malice or ill-will to prove his action under the Civil Rights Act. All that is required is that he demonstrate state action which amounts to an actual deprivation of constitutional rights or other rights guaranteed by law.

The defendants did not object to this instruction, and do not challenge its correctness here.[48] The instruction was proper, and that there was sufficient evidence to support a jury finding that the defendants did not act at all times in a good faith and reasonable belief that Donaldson needed continued confinement and that continued confinement was lawful. In effect, the jury found, on the facts, that Donaldson's right to treatment was denied not, or not only by the limitations of funds and staff and resources under which the hospital operated, but also by the actions of Gumanis and O'Connor themselves.

We are "duty bound to accept all evidence in favor of the verdict as true and to give such evidence the benefit of all permissible inferences that would help sustain the jury's decision". Little v. Green, 5 Cir. 1970, 428 F.2d 1061, cert. denied, 400 U.S. 964, 91 S.Ct. 366, 27 L.Ed.2d 384; Grey v. First National Bank, 5 Cir. 1968, 393 F.2d 371, 381. We hold therefore that the evidence supported the jury's finding that the defendants did not act in good faith.

48. Dowsey v. Wilkins, 5 Cir. 1972, 467 F.2d 1022, 1025–1026.

IV.

The first contention made by Gumanis alone is that the Northern District of Florida's jury selection plan operated to abridge his right to a jury trial under the seventh amendment and under 28 U.S.C. §§ 1861, 1862, by permitting the "systematic exclusion" of physicians from the jury rolls. Gumanis raised his objection to the composition of the jury on the first day of the trial, but after the jury had been impanelled and sworn. The Northern District selection plan allows certain specified classes of person, including "actively engaged members of the clergy" and "actively practicing attorneys, physicians, and dentists, and registered nurses", to be excused from jury duty if they so desire. The authority for these exceptions is an express provision of the Jury Selection and Service Act. 28 U.S.C. § 1863(b)(5) provides that a jury selection plan shall "specify those groups of persons or occupational classes whose member shall, on individual request therefore be excused from jury service. . . . if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience. . . . ."

[6, 7] There is no merit to the defendant's contention. The trial court correctly held that the objection was not timely raised, since the defendants had not mentioned it until after the jury was impanelled. See Brooks v. United States, 5 Cir. 1969, 416 F.2d 1044, 1047. We also agree with his ruling that the jury selection plan was in compliance with the statute.

V.

Gumanis next objects to the trial court's refusal to instruct the jury that Donaldson's claim was barred by the statute of limitations.[49] This contention is premised upon the fact that Donaldson was taken out of his care April 18, 1967, more than four years before the filing of the First Amended Complaint in this case, and about five years before the complaint was amended to add Gumanis as a defendant.

Since there is no statute of limitations provided under § 1983, federal courts adopt the statute of limitations of the state where the action arose,[50] and apply the "resemblance test" to decide which state statute is an appropriate one to apply.[51] In this case, the parties agree that the limitation period should be taken from one of three state statutes: the two-year statute applicable to both false imprisonment actions and to actions for medical malpractice; or the three-year statute applicable to actions upon liabilities created by statute; or the four-year statute applicable to miscellaneous actions not specifically provided for elsewhere in the Florida statute of limitations chapter.[52] Gumanis argues that it is irrelevant which of these 3 periods we apply, since even if the

49. The instruction in question read:
You are instructed that the statute of limitations for the wrongs alleged in the complaint are for the period of four (4) years, and that the defendants should not be held accountable for any damages which occurred from wrongs occurring prior to the four (4) year period preceding the complaint.
Donaldson argues that the defendants' objection to the trial judge's refusal to give this instruction is not properly before this Court, again because no objection was made to the trial judge's failure to give the instruction either at the charge conference or after the charge was read to the jury. See note 8 *supra*. Again, however, defendants' pretrial brief advised the court of the defendants' position, and again we hold that that sufficed to excuse the failure to object. See note 8 *supra*.

50. Campbell v. Haverhill, 1895, 155 U.S. 610, 15 S.Ct. 217, 39 L.Ed. 280.

51. See, *e. g.*, Smith v. Cremins, 9 Cir. 1962, 308 F.2d 187.

52. Fla.Stat. § 95.11(4), (5)(a), (6), F.S.A.

longest, the four-year statute, is applied, the period of limitations had elapsed by the time Gumanis was added as a defendant in this suit. Donaldson agrees that it is irrelevant which statute is chosen, since the limitation did not begin to run until July 31, 1971, the date Donaldson was released from the hospital. Donaldson therefore argues that the suit was timely brought, even if the two-year limitation period applies.

[8–10] We agree with Donaldson that the limitation period, be it two, three, or four years, did not begin to run until July 31; Donaldson's cause of action did not accrue until that time. When a tort involves continuing injury, the cause of action accrues, and the limitation period begins to run, at the time the tortious conduct ceases. See, *e. g.*, Fowkes v. Pennsylvania R. R. Co., 3 Cir. 1959, 264 F.2d 397. In the case of false imprisonment, the tort action this case most resembles, the cause of action does not accrue until the release of the imprisoned party.[53]

[11] We have found no Florida decision addressing the question when a cause of action for false imprisonment accrues. But in a § 1983 suit, even though a state statute is applied, the question when a federal cause of action *accrues* is a matter of federal, not state law.[54] The state statute is applied in the first place not as a matter of legal compulsion, but merely as a matter of convenience; there is no other period of limitation available.[55] We hold that in a case such as

53. See, *e. g.*, Bronaugh v. Harding Hospital, Inc., 1958, 12 Ohio App.2d 110, 231 N.E.2d 487; Mobley v. Broome, 1958, 248 N.C. 54, 102 S.E.2d 407; Matovina v. Hult, 1955, 125 Ind.App. 236, 244, 123 N.E.2d 893; Bellflower v. Blackshere, Okl.1955, 281 P.2d 423, 425; Oosterwyk v. Bucholtz, 1947, 250 Wis. 521, 525, 27 N.W.2d 361; Jedzierowski v. Jordan, 1961, 157 Me. 352, 172 A.2d 636.

54. See, *e. g.*, Rawlings v. Ray, 1941, 312 U.S. 96, 61 S.Ct. 473, 85 L.Ed. 605; Cope v. Anderson, 1947, 331 U.S. 461, 67 S.Ct. 1340, 91 L.Ed. 1602; Sandidge v. Rogers, S.D.Ind.1958, 167 F.Supp. 553, 556; 2 Moore's Federal Practice ' 3.07(2) at 750.

55. See McAllister v. Magnolia Petroleum Co., 1958, 357 U.S. 221, 228-230, 78 S.Ct. 1201, 2 L.Ed.2d 1272 (Brennan, J., concurring); 2 Moore's Federal Practice ' 3.07(2).

this one, where a tort causing continuing injury is alleged, a patient's cause of action does not accrue until the date of his release.

VI.

[12] Gumanis next contends[56] that the district court erred in refusing to instruct the jury that he and the other defendants were entitled to a defense of quasi-judicial immunity under the Civil Rights Acts. At issue is defendant's proposed instruction number 11, which read:[57] "If you find that the defendants were operating in a quasi-judicial function, in that they, under state law, were making a judgment as to whether or not plaintiff should be released, defendants are immune from liability under the Civil Rights Act."

Gumanis relies primarily upon three Ninth Circuit cases. The first and most important is Hoffman v. Halden, 1969, 268 F.2d 280, in which the Ninth Circuit held that the superintendent of a state mental hospital, who allegedly had wrongfully detained a patient committed under a valid judicial commitment order, was immune from liability. The superintendent was empowered to release the patient when, in his own judgment, he found the patient no longer in need of confinement. The Court held that because he had been exercising a "discretionary" function, the Superintendent was immune from liability. The other two Ninth Circuit cases, Silver v. Dickson, 1968, 403 F.2d 642, and Keeton v. Procunier, 1971, 468 F.2d 810, held that members of state parole boards are immune from § 1983 liability, on the ground that the threat of liability would "exert a restricting influence on the overall functioning of the agency". *Silver*, 403 F.2d at 643.

56. Once again, Donaldson argues that the objection to the refusal to give the instruction is not properly before the Court. See notes 8, 49 *supra*. Once again, we hold that the trial judge was sufficiently apprised of the defendants' objections for us to consider the objection as having been preserved. See notes 8, 49 *supra*.

57. The full instruction is quoted in part III *supra*.

[13] Gumanis's argument is essentially that he is entitled to the defense, available to state officials in most common law jurisdictions, of absolute immunity for acts done in the performance of a "discretionary"—as opposed to a "ministerial"—function. See, *e. g.*, Barr v. Matteo, 1959, 360 U.S. 564, 79 S.Ct. 1335, 3 L.Ed.2d 1434 (immunity for federal officials as a matter of federal common law). For discussions of the common law rule, see Norton v. McShane, 5 Cir. 1964, 332 F.2d 855, 857 861 (Rives, J.); Anderson v. Nosser, 5 Cir. 1971, 438 F.2d 183, 198 200 (Goldberg, J.); modified en banc on other grounds, 1972, 456 F.2d 835; Carter v. Carlson, 1971, 144 U.S.App.D.C. 388, 447 F.2d 358, 361 365; 2 F. Harper & F. James, The Law of Torts § 29.10 at 1638 46 (1956). We must reject Gumanis's argument, however, because we have consistently held that the full range of officials immunities available at common law do not apply in actions brought under § 1983. Roberts v. Williams, 5 Cir. 1972, 456 F.2d 819, 830; *Anderson, supra*, 438 F.2d at 201; *Norton, supra*, 332 F.2d at 860 861 (dictum). In taking this position we have been joined by all the other circuits that have considered the question. *Carter, supra*, 447 F.2d at 365; Dale v. Hahn, 2 Cir. 1971, 440 F.2d 633; Kletschka v. Driver, 2 Cir. 1969, 411 F.2d 436, 448; Jobson v. Henne, 2 Cir. 1966, 355 F.2d 129, 133-134; McLaughlin v. Tilendis, 7 Cir. 1968, 398 F.2d 287; Donovan v. Reinbold, 9 Cir. 1970, 433 F.2d 738.

Official immunity has been restricted under § 1983, because that provision is directed at actions "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory", and provides that "every person" subjecting another to a deprivation of constitutional rights shall be liable. See Francis v. Lyman, 1 Cir. 1954, 216 F.2d 583, 587; *Jobson, supra*, 355 F.2d at 133; *Anderson, supra*, 438 F.2d at 201; *Hoffman, supra*, 268 F.2d at 290. It has been the view of the courts that recognizing broad judicial immunities "would prac-

tically constitute a judicial repeal" of § 1983, since state officers are likely to be the primary persons found acting "under color of" law. *Hoffman, supra*, at 300; *Jobson, supra*, 355 F.2d at 134. Accordingly, the courts have repudiated what the district court for the District of Nevada has called the "discretionary act test" for determining when official immunity is appropriate in § 1983 cases. Adamian v. University of Nevada, 1973, 359 F.Supp. 825, 834. Instead, we and other courts have applied what the *Adamian* court called the "good faith for qualified governmental immunity" test, allowing immunity when (1) the officer's acts were discretionary; *and* (2) the officer was acting in good faith. Here, as noted above, the trial judge instructed the jury to find for the defendants if it found the defendants acted in good faith; and, again as noted above, the defendants have not challenged the propriety or phrasing of this instruction. That instruction was all that was required by this Court's version of the doctrine of "quasi-judicial" or "official" immunity from Civil Rights Act liability.[58]

58. It is appropriate to say in this context that we do not view the *Hoffman*, *Silver*, and *Keeton* cases as sound authority for a contrary result. The Ninth Circuit has made it clear that Hoffman and Silver do not "stand for the broad principle that all public officials are immune from Civil Rights Act liability if their acts were discretionary and done within the scope of their official duties". Donovan v. Reinbold, 9 Cir. 1970, 433 F.2d 738, 744. The Second Circuit had earlier stated its view that it would have disapproved the *Hoffman* decision if that decision had to be read to mean that "all subordinate state officials should be granted an immunity for all discretionary acts". *Jobson, supra*, 355 F.2d at 134 n. 11. And we ourselves have already once stated our view that *Hoffman* represented a "questionabl[e] resol[ution]" of the problem of official immunity under the Civil Rights Act. Norton v. McShane, 5 Cir. 1964, 332 F.2d 855, 861 n. 9, (Rives, J.). To the extent that *Hoffman*, by implying that state mental health officials should enjoy some form of "quasi-judicial immunity", is read as authority for a result contrary to the one we reach here, we decline to follow it. We rely instead on *Dale* and *Jobson*, where the Second Circuit held state psychiatrists and mental hospital officials were not entitled to immunity under § 1983.

VII.

[14] The remainder of the objections Gumanis raises pose little difficulty. Gumanis contends that the trial judge erred in allowing the jury to award punitive damages. The objection is without merit. The trial judge instructed the jury that it could award punitive damages if it found that the defendants had acted "maliciously", "wantonly", or "oppressively". The instruction was proper as a matter of law, and there was ample evidence, some of it recited in our statement of facts above, to support a jury finding that the defendants' acts were "malicious", "wanton", or "oppressive".

[15] Gumanis argues that Donaldson's failure to receive treatment was a result largely of his own refusal, on religious grounds, to accept certain forms of treatment, particularly medication and electroshock treatments, and his failure to petition for restoration of his competency under Fla.Statutes § 394.22, F.S.A. Neither argument has any merit. As for Donaldson's refusal of forms of treatment, the trial judge instructed the jury: "You are instructed that if Plaintiff through his own actions contributed to the withholding of a particular form of treatment, that Plaintiff is not entitled to collect compensation from the Defendants for the failure to give such treatment during the particular period or periods Plaintiff refused such treatment." Gumanis did not at the trial and does not now object to this instruction. We find no reason to believe that either the verdict or the award of damages was based upon the failure to give Donaldson those forms of treatment he refused. As for his failure to petition for a restoration of his competency, the statute in question does not permit a person adjudged incompetent to petition on his own for a restoration of his competency; the petition may be instituted only by a parent, guardian, or "next friend". Donaldson cannot be held accountable for not doing what he was legally unable to do.

Finally, Gumanis contends that "the cumulative effect of certain errors and irregularities during the course of the trial

was such as to significantly undermine the fairness of the trial itself". We have considered these alleged errors too, and find no merit to any one of them. We have also concluded, upon a review of the record, that cumulatively they did not affect the fairness of the trial to any appreciable extent.

The judgment of the district court is

Affirmed.

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United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1973

No. 73-1843

D. C. Docket No. CA 1693

KENNETH DONALDSON,
Plaintiff-Appellee,

versus

J.B. O'CONNOR, M.D. and JOHN GUMANIS, M.D.,
Defendants-Appellants.

Appeals from the United States District Court for the
Northern District of Florida

Before RIVES, WISDOM and MORGAN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

April 26, 1974

Issued as Mandate:

BEST COPY AVAILABLE